

ONTARIO LABOUR RELATIONS BOARD

Between:

The Mechanical Contractors Association  
of Thunder Bay,

Applicant,

- and -

United Association of Journeymen &  
Apprentices of the Plumbing & Pipefitting  
Industry of the United States & Canada,  
Local Union 628,

Respondent.

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

APPEARANCES AT THE HEARING: W.S. Cook, J.R. Brimmell  
and J. Hacio for the applicant; no one appearing for  
the respondent.

DECISION OF THE BOARD:

1. The applicant and the respondent are parties to a collective agreement dated April 30, 1970. This agreement was in effect at the time this application was made on October 27, 1972. This agreement is binding on more than one employer in the geographic area and sectors 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 filed with its application a copy of the Constitution of The Mechanical Contractors Association of Thunder Bay. This Constitution was identified at the hearing in this matter by Mr. John Reginald Brimmell, the Secretary-Treasurer of the applicant, as a true copy of the Constitution and By-laws duly passed by the applicant association on April 27, 1972. The Constitution contains inter alia the following provision:

OBJECTS

ARTICLE 3

The Objects of the Association shall be:

- (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 sector or sectors in any geographical area or areas as defined under the Labour Relations Act or as determined by the Labour Relations Board.

The By-law contains the following provision in Article 13:

LABOUR NEGOTIATIONS

ARTICLE 13

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 deem to have authorized such application or applications on its behalf.

The Board is satisfied that the applicant employers' organization is an employers' organization within the meaning of section 106(d) of the Act and that it is a properly constituted organization for the purposes of section 115(3) of the Act.

3. The applicant filed with its application sixteen (16) documents entitled Employer Authorization. These Employer Authorizations appoint the applicant as the bargaining agent for the named employer on the authorization in regard to the employees covered by the collective agreement with the respondent trade union. The appointment covers the geographical area in question and the sectors which are the subject matter of this application. The Board therefore finds that the applicant has submitted acceptable evidence of representation in accordance with section 96 of the Board's Rules of Procedure on behalf of sixteen (16) employers. The Board is further satisfied that those employers who are represented by the applicant have vested sufficient authority in the applicant to discharge the responsibilities of an accredited employers' organization on their behalf.

4. In accordance with the Board's decision of January 22, 1973, the Registrar notified all the employers on the list of employers with the Board's decision to entertain the request by the applicant to

amend the proposed unit of employers in this application. As pointed out in that decision the applicant originally requested accreditation for the industrial, commercial and institutional sector of the construction industry. Subsequently, the applicant requested that the proposed unit of employers be amended to include the residential sector of the construction industry. At the hearing in this matter no objection to this proposed amendment was raised by either the respondent or any of the employers affected by the application. Further, it is clear from the evidence before the Board that the collective agreement upon which this application is based applies to both the industrial, commercial and institutional sector and the residential sector of the construction industry in the geographic area under consideration. The Board therefore proposes to allow the amendment requested by the applicant to combine the residential sector with the industrial, commercial and institutional sector as the appropriate sector of the construction industry for accreditation in the present application. Accordingly the Board finds that all employers of plumbers, plumbers' apprentices, steamfitters, steamfitters' apprentices and welders for whom the respondent has bargaining rights in the Districts of Thunder Bay, Rainy River, Kenora, including the Patricia Portion and that part of the Districts of Algoma, Sudbury and Cochrane lying north of the 48th parallel of latitude and west of the 82nd degree west meridian of longitude in the industrial, commercial and institutional sector and the residential sector in the construction industry, constitutes a unit of employers appropriate for collective bargaining.

5. The list of employers affected by this application totals twenty-five (25) employers. The appropriate filings in Form 68 and Schedule "H" were received from all but three (3) of these twenty-five (25) employers. These employers have been given notice of the application in accordance with the Board's Rules of Procedure and have been cautioned that the Board may dispose of the application without considering the representations of any employer who fails to appear at the hearing. Accordingly the Board proposes to accept the representations of the applicant with respect to the three (3) employers who failed to make a filing in the appropriate form. The representations of the applicant in this matter are as follows:

No. 6 - Frank's Plumbing & Heating  
is an employer for whom the respondent  
has bargaining rights, but who has not  
had employees in the year immediately  
preceding October 27, 1973.

No. 16 - Sterling Plumbing Service  
is an employer for whom the respondent  
has bargaining rights and during the  
week immediately preceding October 27,  
1972, had one employee.

No. X3 - B & D Plumbing  
is an employer for whom the respondent  
has bargaining rights and during the  
week immediately preceding October 27,  
1972, had one employee.

6. One of the employers on the list of employers  
X2 - Alpine Mechanical Contracting Co. Ltd. - claimed that  
the respondent was not entitled to bargain on behalf of  
its employees in paragraph 3 of this Employer Intervention  
in Form 68. On the other hand, this employer also filed  
a letter with the Board in affect opposing the application  
because it was that employer's experience that the  
respondent had not properly been able to supply workmen.  
This admission taken together with the filing in Schedule  
"H" by this employer which indicates that there were  
thirteen (13) employees affected by the application in  
the week immediately preceding the application, contradicts  
the statement in paragraph 3 of the Employer Intervention.  
Accordingly, we propose to accept the representations of  
the applicant that this employer is party to a collective  
agreement with the respondent trade union and is therefore  
an employer in the unit of employers and on Schedule "E".

7. With respect to the remaining employers the  
Board proposes to accept the filings in Form 68 and  
Schedule "H". The Board has taken the correct name of  
the employer as the name listed on the Form 68 with the  
exception of No. 7 - William Hacio - who will appear as  
set out on the revised schedule of employers as Hacio  
Bros. Limited, and X4 - Stanley Prontack - will appear  
as Biltmore Plumbing carrying on business as Biltmore  
Plumbing.

8. In accordance with the above considerations and  
on the basis of all the materials filed with the Board,  
the Board has drawn up the following Final Schedule "E" and  
Final Schedule "F":

FINAL SCHEDULE "E"

Algoma Maintenance & Services Ltd.  
Arthur's Plumbing & Heating  
Axelson's Plumbing & Heating Contractor  
Burton Plumbing & Heating Limited  
Comstock International Ltd.  
Hacio Bros. Limited  
Higginbottom & Company Limited  
Keenan Plumbing & Hydronics

Lakehead Acadia Plumbing & Heating  
Company Limited  
Lakehead Do-All Plg.  
Lampshire and Terry Limited  
MacNeil (Lakehead) Company Limited  
Mathias & Nicol, Mechanical Division of  
Commonwealth Construction Company Limited  
Alberts Plumbing & Heating  
Alpine Mechanical Contracting Co. Ltd.  
B & D Plumbing  
Biltmore Plumbing  
Clow Darling Plumbing & Heating  
Frank E. Simmons Ltd.  
L. A. Greene & Company Limited  
Wilf's Plumbing Service

FINAL SCHEDULE "F"

Frank's Plumbing & Heating  
J. D. Mahoney  
Looney's Plumbing

The Board finds that the twenty-two (22) employers on Final Schedule "E" were those employers who had employees in the year immediately preceding the making of the application and the number twenty-two (22) 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 fourteen (14) of the twenty-two (22) employers on Final Schedule "E". The fourteen (14) 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 Intervention, filed by the individual employers sets out the number of employees that the employer intervenor 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. The Board is satisfied that the weekly payroll period immediately preceding October 27, 1972, 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 one hundred and forty (140) employees affected by the application during the payroll period immediately preceding October 27, 1972. The one hundred and forty (140) employees is the number of employees to be ascertained by the Board under section 115(1)(c) of the Act.

11. The Board further finds that the fourteen (14) employers represented by the applicant employed eighty-seven (87) of these one hundred and forty (140) 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.

12. 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 October 27, 1972, obtain bargaining rights through certification or voluntary recognition in the geographic area and sectors set out in the unit of employers.

April 26, 1973

"D. E. Franks"  
for the Board