

ONTARIO LABOUR RELATIONS BOARD

Between:

Toronto Sheet Metal and Air Handling
Group,

Applicant,

- and -

Sheet Metal Workers' International
Association, Local Union #30,

Respondent,

- and -

Stainless Steel Equipment Manufacturers
et al,

Intervener #1,

- and -

Residential Sheet Metal Contractors
Organization,

Intervener #2.

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

APPEARANCES AT THE HEARING: W.S. Cook, L. Gianfarani
and J. Homer for the applicant; Ernest T. Ferguson for
the respondent; R.C. Fillion and J.S. Newman for
intervener #1; M.D. Ledgett for intervener #2; Brian
Wild for Employer X-15 - Seeback & Sons Ltd.

DECISION OF THE BOARD:

1. The name "Sheet Metal Workers' International
Association, Local Union No. 30 of Toronto, Canada"
appearing in the style of cause of this application as
the name of the respondent is amended to read: "Sheet
Metal Workers' International Association, Local Union
#30".

2. The applicant and the respondent are party
to a collective agreement effective May 1, 1971. That
agreement remained in force until April 30, 1973. This
agreement is binding on more than one employer in the

geographic area and the section of the construction industry which are the subject matter of this application. The Board therefore finds that it has the jurisdiction under section 113 of the Act to entertain this application for accreditation.

3. The applicant in the present case is a Corporation. The Corporation was formed by Letters Patent dated October 17, 1967, as a Corporation without share capital called the Toronto Sheet Metal and Air Handling Group. The objects of this Association were varied by Supplementary Letters Patent dated May 2, 1971, and November 9, 1971. The amendments inter alia empower the applicant to act as an accredited employers' organization within the meaning of The Labour Relations Act. The applicant also filed with the Board a copy of its By-law #2 which was ratified by the members at a meeting on September 18, 1971. On the basis of the Letters Patent and the evidence of the By-law 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.

4. The applicant also filed with its application evidence of representation in the form of an Employer Authorization. That authorization appoints the applicant association to represent the signatory employer as bargaining agent in regard to the employees covered by the collective agreement with the respondent trade union in the area and sector affected by this application. The applicant filed a total of 76 such representation documents and the representation documents were accompanied by duly completed Form 62, Declaration Concerning Representation Documents. The Board therefore finds that the applicant has filed acceptable evidence of representation in accordance with section 96 of the Board's Rules of Procedure on behalf of 76 employers. The Board is further satisfied that the 76 employers who are represented by the applicant have vested sufficient authority in the applicant to enable it to discharge the responsibilities of an accredited employers' organization on their behalf.

5. The applicant seeks to be accredited for the following unit of employers that it claims to be appropriate:

All employers of journeymen sheet metal workers and registered apprentices for whom the Respondent has bargaining rights in Halton County with the exception of the west side of Oakville Creek in Trafalgar Township; Nelson and Nassawageya Townships;

Peel County; Erin Township in Wellington County; Dufferin County; Simcoe County; Metropolitan Toronto; York County; County Ontario; the Townships of Cartwright and Darlington in Durham County; District of Muskoka and the Townships of Carling, Ferguson, McDougall, McKellar, Christie, Foly, Conger and Humphries in the District of Parry Sound in the Province of Ontario in the Industrial, Commercial and Institutional, Sewers, Tunnels and Watermains, Roads, Heavy engineering, Pipeline, Electrical power systems sectors.

At the commencement of the hearing the applicant informed the Board that it was only seeking accreditation for the industrial, commercial and institutional sector of the construction industry, and not seeking accreditation for the sewers, tunnels and watermains, roads, heavy engineering, pipeline or electrical power systems sectors. The geographic area referred to above is the geographic area in the collective agreement in force between the applicant and the respondent referred to in paragraph 2 above. In determining the appropriate geographic area for accreditation the Board has accepted the area in the collective agreement on which the application is based as the appropriate geographic area for the unit of employers. Subsequent to the hearing the applicant drew the Board's attention to two other agreements, one involving the Oshawa area and Sheet Metal Workers' International Association, Local Union #30-B and one involving the Barrie area and Sheet Metal Workers' International Association, Local Union #30-C. The areas affected by these collective agreements forms only a fraction of the area which has been agreed by the applicant and the respondent in the present case as the appropriate geographic area for the unit of employers, and we do not propose to alter the appropriate geographic area in the present case. It is not clear whether the trade unions that made those agreements are separate entities. We would, however, point out that if they are the same entity as the respondent in the present case then the geographic area found to be appropriate in the present case would include those agreements and consequently those agreements would be superseded by any agreement between the applicant and the respondent arising out of the order in the present case.

6. Intervener #1, Stainless Steel Equipment Manufacturers et al appeared at the hearing representing certain employers who are manufacturers of stainless steel products. It was accepted by all that the employers represented by the intervener who have an agreement with the respondent are manufacturers (as distinct from fabricators) and are therefore not employers

in the construction industry. Intervener #1, however proposed that the Board should issue a clarity note to the effect that any accreditation order which may be issued in this matter shall have no application to the members of intervener #1 in performing the type of installation work currently performed under the collective agreement between intervener #1 and the respondent. The intervener pointed out that this type of clarity note was issued in previous accreditation orders involving pipeline contractors. We are prepared to accept the exclusion of these employers from the unit of employers on the basis that they are not employers in the construction industry. We are, however, not disposed to accept the collective agreement as defining the grounds for exclusion from any accreditation order. Our concern is that the terms of such a collective agreement can be varied by the parties to the agreement and such uncertainty cannot be viewed as in the best interests of harmonious industrial relations in the construction industry, and indeed runs contrary to the intention of the Legislation providing for the exclusive representation of all employers in an appropriate unit of employers.

7. Having regard to the above considerations *employers of* the Board further finds that all sheet metal workers; and sheet metal worker apprentices for whom the respondent has bargaining rights in Halton County with the exception of the west side of Oakville Creek in Trafalgar Township; Nelson and Nassawageya Townships; Peel County; Erin Township in Wellington County; Dufferin County; Simcoe County; Metropolitan Toronto; York County; County Ontario; the Townships of Cartwright and Darlington in Durham County; District of Muskoka and the Townships of Carling, Ferguson, McDougall, McKellar, Christie, Foly, Conger and Humphries in the District of Parry Sound in the Province of Ontario in the industrial, commercial and institutional sector of the construction industry, constitute a unit of employers appropriate for collective bargaining.

8. As a result of the filings of the applicant and the respondent notice of this application was sent to 97 employers affected by the application in accordance with the Board's Rules of Procedure. After the hearing in this matter the Board's attention was drawn to some three employers who might possibly have an interest in this application. Notice of the application was not given to these employers. We do not propose to deal with these employers as being affected by the application. The Board's Rules of Procedure set dates by which the parties must notify the Board of the employers affected by the application and the Board cannot vary the cut-off dates which are effectively set by the Board's Rules of Procedure without having serious consequences on the

administration of such applications. We are satisfied that such a minor lapse of notice to these employers could not possibly affect the outcome of this decision and further we would point out that if the respondent does have bargaining rights for the employees of these employers then either the applicant or the respondent may apply to the Board to vary the order in the present case to include in the unit of employers these employers not included by such inadvertence. It will, of course, be necessary to prove that such employers fall within the unit of employers found to be appropriate in the present case.

9. Of the 97 employers given notice of the application the applicant and the respondent have agreed that Employer #3 - Air Service Sheet Metal Limited; Employer X-5 - Fraser-Brace Engineering Company Limited; and Employer X-12 - W.C. Pursley Ltd. should be removed from the list of employers in the unit of employers. A number of the employers given notice of this application have failed to make a filing. In accordance with its usual practice the Board proposes to accept the agreement of the applicant and the respondent as to the disposition of these employers. Accordingly -

No. 12 - Bothwell-Accurate Co. Limited is an employer for whom the respondent has bargaining rights and during the week immediately preceding November 15, 1972, had seventeen employees.

No. 20 - Coolbreeze Air Conditioning and Heating Limited is an employer for whom the respondent has bargaining rights and during the week immediately preceding November 15, 1972, had twelve employees.

No. 28 - Dufferin Roofing Co. Ltd. is an employer for whom the respondent has bargaining rights and during the week immediately preceding November 15, 1972, had four employees.

No. 35 - Flexmaster Company Limited is an employer for whom the respondent has bargaining rights and during the week immediately preceding November 15, 1972, had two employees.

No. 44 - Kerstone Contractors Limited is an employer for whom the respondent has bargaining rights, but who has not had employees in the year immediately preceding November 15, 1972.

No. 54 - New-O-Sheet Metal Limited is an employer for whom the respondent has bargaining rights, but who has not had employees in the year immediately preceding November 15, 1972.

No. 55 - Patterson-Yates-Smith Limited is an employer for whom the respondent has bargaining rights and during the week immediately preceding November 15, 1972, had three employees.

No. 66 - Scarborough Steel Erection Services is an employer for whom the respondent has bargaining rights and during the week immediately preceding November 15, 1972, had two employees.

No. X-14 - Ross Division Midland Ross of Canada is an employer for whom the respondent has bargaining rights and during the week immediately preceding November 15, 1972, had one employee.

No. X-19 - Freeman Sheet Metal Ltd. is an employer for whom the respondent has bargaining rights and during the week immediately preceding November 15, 1972, had twelve employees.

10. The remaining employers served with notice of the application filed the appropriate returns in Form 68 and Schedule "H". Five of these employers have indicated in their filings that the respondent trade union is not entitled to bargain with respect to their employees. With respect to four of these five employees the applicant and the respondent have submitted acceptable documentary evidence indicating that these employers are bound by the collective agreement between the applicant and the respondent. Accordingly, the following employers will be included as employers in the unit of employers:

X-2 - Canadian Johns-Manville Co.
X-9 - Murfin Heating & Cooling Co.
X-11 - Plewman Roofing Co. Ltd.
X-17 - Weather Systems Ltd.

For the remaining employer No. 56 in respect of whom no such evidence was tendered the Board will accept the representation of that employer and accordingly No. 56 - Petersen Erection Service is removed from the list of employers in the unit of employers.

11. With respect to the remaining employers the Board proposes to accept their filings in Form 68 and Schedule "H". The Board has taken as the correct name

of the employer the name as indicated on the Form 68.
As a result of these filings the following Final Schedule
"E" and Final Schedule "F" has been drawn up:

FINAL SCHEDULE "E"

Air Balance of Canada Manufacturing Limited
Air Devices Canada Limited
Allcraft, A Division of Ray White & Sons
Limited
Alpha Sheet Metal Ltd. or Deban Developments
Limited
Applied Insulation Co. Ltd.
Arrow Sheet Metal Limited
A. G. Baird Limited
G. A. Barber Mechanical (Central) Limited
Beaver Engineering Limited
John A. Dennis - Beavis Bros. Limited
Bothwell-Accurate Co. Limited
J. A. Bouley Ltd.
Canadian Advanced Air Limited
Canadian Rogers Eastern Limited
Cem-Al Erectors Limited
James C. Chandler Co. Ltd.
Clope Construction Co. Ltd.
Comstock International Ltd.
Coolbreeze Air Conditioning and Heating Limited
Dean-Chandler Company Limited
Dewar Insulations Limited
Doughty & Darling Limited
Dunford-Lisco Limited
Dunview Sheet Metal Ltd.
Dial Sheet Metal Ltd.
Dome Metal Erectors Ltd.
Dufferin Roofing Co. Ltd.
Durcard (Toronto) Limited
Eady Bros. & Co. Limited
English and Mould Limited
W. H. Ellinger Limited
Engineered Balancing and Maintenance Co. Limited
Elmvale Metal Products Limited
Flexmaster Company Limited
D. L. Foster Sheet Metal Limited
G & G Sheet Metal Limited
Galco Sheet Metal Limited
Giffin Sheet Metals Limited
Heather & Little Limited
N. Harrington Roofing & Sheet Metal
Janco Sheet Metal Limited
Kerr-Hunt & Associates Limited
G. R. LeBarre and Company Limited
Leslie Bros. (1966) Limited
Lorlea Steels Limited
MacKinnon Mitchell & Associates
Master Sheet Metal (Toronto) Limited
Munn Sheet Metal Limited

Nartco Sheet Metal Limited
Patterson-Yates-Smith Limited
Pyramid Sheet Metal Limited
Pollard Roofing Limited
Principal Heating Company Limited
Rexway Sheet Metal Limited
Richvale Heating & Cooling Company Limited
Robert Bratti and Associates Limited
F. J. Maher Ltd.
Royce Metal Products Limited
Sayers & Associates Limited
Scarborough Steel Erection Services
Sneddon-Wakefield Limited
Robert W. Taylor Contracting Limited
Toronto Air Conditioning Company Ltd.
Tam-Kal Limited
Tru-Temp Heating Company Limited
United Installation Services Limited
Nicholls Industries Ltd.
Wedig Sheet Metal Limited
Westeel-Rosco Limited
York Roofing Limited
Canadian Johns-Manville Co.
Dunn Sheet Metals
Feather & Roadhouse
A. E. Furnival & Co. Ltd.
Johnson Controls Ltd.
McKee Sheet Metal Ltd.
Peerless Enterprises Co. Ltd.
Relco Roofing Co. Ltd.
Ross Division Midland Ross of Canada
Seeback & Sons Ltd.
Semple - Gooder Roofing Limited
Apollo Sheet Metal Contractors Limited
Freeman Sheet Metal Ltd.
Charles Mugford & Associates Limited

FINAL SCHEDULE "F"

Fischbach and Moore of Canada Ltd.
Kerstone Contractors Limited
Margell Mechanical Contractors Limited
New-O-Sheet Metal Limited
Albern Mechanical Limited
Murfin Heating & Cooling Co.
Plewman Roofing Co. Ltd.
Weather Systems Ltd.
A. U. Napier Company Limited

The Board finds that the 84 employers on Final Schedule "E" were those employers who had employees in the year immediately preceding the making of the application, and the number 84 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 70 of the 84 employers on Final Schedule "E". The 70 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 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 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 November 15, 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 1,207 employees affected by the application during the payroll period immediately preceding November 15, 1972. The 1,207 employees is the number of employees to be ascertained by the Board under section 115(1)(c) of the Act.

14. The Board further finds that the 70 employers represented by the applicant employed 1,061 of these 1,207 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.

15. 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 7, 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 15, 1972, obtain bargaining rights through certification or voluntary recognition in the geographic area and sectors set out in the unit of employers.

January 25, 1974

"D. E. Franks"
for the Board