August 10, 1972

File No. 1049-71-R

ONTARIO LABOUR RELATIONS BOARD

Between:

Pipe Line Contractors Association of Canada,

Applicant,

- and -

International Union of Operating Engineers, Local 793,

Respondent,

- and -

The Utility Contractors Association of Ontario,

Intervener.

BEFORE: O.B. Shime, Vice-Chairman, and Board Members H.J.F. Ade and E. Boyer.

APPEARANCES AT THE HEARING: W.K. Winkler, R.C. Filion and G.R. Hodson for the applicant; H.A. Herron for the respondent; B.W. Binning and S. Bernardo for the intervener.

DECISION OF THE BOARD:

1. The name "The International Union of Operating Engineers Local Union No. 793" appearing in the style of cause of this application as the name of the respondent is amended to read: "International Union of Operating Engineers, Local 793".

2. This is one of four applications for accreditation by the Pipe Line Contractors Association of Canada. The applications are with respect to four different trades; however, they are all concerned with employers in the pipe-line sector of the construction industry. They have an additional common aspect in that the geographic area which is the subject matter of these applications is the whole geographic area of the Province of Ontario. As a result of the similar subject matter these cases were dealt with as a group, although they were not, and could not be, consolidated.

3. As part of its application, the applicant filed a

declaration by its Executive Secretary stating that the applicant is an employers' organization that represents employers who operate businesses in the construction industry. The applicant also filed a copy of a collective agreement between the applicant on behalf of certain employers and the respondent, dated the 30th day of July, 1970, and continuing in effect until the 30th day of April, 1972. It is clear that this agreement gives the respondent trade union the bargaining rights for the employees of more than one employer in the geographic area and sector 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.

4. The applicant, Pipe Line Contractors Association of Canada, is a corporation under Part II of the Canada Corporations Act. Letters Patent were issued by the Minister of Consumer and Corporate Affairs for the Government of Canada to the Pipe Line Contractors Association of Canada on the 9th day of April 1968. On April 26th, 1971, the original Letters Patent were amended by Supplementary Letters Patent. As a result of the Supplementary Letters Patent the objects of the applicant corporation included the following:

> (i) to regulate the relations between employers and employees in the pipeline construction industry;
>
> (ii) to become a representative association and/or a registered or accredited employers' organization where such may be provided for by law and to conduct collective bargaining and to administer collective bargaining agreements on behalf of employers of employees in the pipeline construction industry.

The applicant has also submitted a copy of a document entitled "Pipe Line Contractors Association of Canada by-Laws". This document sets out various by-laws relating to membership, its board of directors, officers, and meetings. Of particular interest here is item number 41, entitled "Labour Committee" which reads as follows:

> 41. Labour Committee
>
> (a) The President, subject to approval of the Board of Directors shall appoint a Labour Committee Chairman who shall have authority to select his Committee Members from among the representatives of Regular Members. Not more than one (1) authorized representative of a

Regular Member may serve on the Labour Committee at any one time.

(b) The Labour Committee thus appointed shall have authority in all labour relations matters including, but not limited to, the negotiation and administration of collective bargaining agreements, the appointment of representatives to joint labour-management and/or jurisdictional committees and the settlement of labour disputes including disputes as to assignment of work.

(c) It shall be the duty of the Labour Committee to provide fair representation to all employers of employees represented by the Association in negotiating the terms of and in the administration of collective bargaining agreements.

On the basis of the evidence the Board is satisfied that the applicant corporation 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.

5. In support of its application the applicant submitted thirty-one documents entitled "Appointment" signed by various employers. These documents appoint the applicant corporation as the agent of the signatory employer for collective bargaining with the authority to negotiate, conclude and execute collective agreements on behalf of the employer and as such an agent to be accredited as an employers' organization. In addition to these documents the applicant also filed a list of employers sending out the name, address, telephone number and representative for each of the employers on whose behalf an "Appointment" was submitted. 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 thirty-one employers.

6. It is clear from an examination of the evidence of representation filed by the applicant that each of the employers on whose behalf such evidence was submitted have vested sufficient authority in the applicant to enable it to discharge the responsibilities of an accredited employers' organization on their behalf.

7. The applicant seeks to be accredited as the bargaining agent for a unit of employers consisting of all employers of employees for whom the respondent has bargaining rights in the Province of Ontario in the pipeline sector of the construction industry. The respondent has in its reply also claimed that this is the unit of employers appropriate for

accreditation. The applicant and the respondent as mentioned above, are parties to a collective agreement. That collective agreement does not specifically state a geographic area, it does, however, refer to the jurisdiction of "the union" i.e., the International Union of Operating Engineers Local Union No. 793. It was noted at the hearing that the geographic jurisdiction of this union is the whole of the Province of Ontario. The Board is therefore satisfied that the appropriate geographic area for accreditation is the geographic area of the Province of Ontario.

8. An intervention was filed by the Utility Contractors Association of Ontario. The intervention claimed that the intervening organization had members also bound by a collective agreement with the respondent in the relevant geographic area who might be affected by the application. Further, the intervener requested that such employers be specifically excluded from the description of the unit of employers found by the Board to be appropriate for accreditation. At the commencement of the hearing in this matter, counsel for the applicant and the intervener announced that they had reached an agreement to the effect that the intervener would withdraw its intervention in this matter, if the Board would include a clarity note in its description of the unit of employers. The clarity note would indicate that the kinds of work presently performed under utilities contractors collective agreement will continue to be performed under those collective agreements, and that the kinds of work done under pipeline contractors collective agreements will continue to be performed under those collective agreements. The respondent also agreed to the insertion of such a clarity note with respect to the unit of employers.

9. While such an agreement may appear to be only a statement of the "work jurisdiction" of two different collective agreements it may be understood to go beyond that. The parties were asked how this might affect the sector applied for in this application and their position was that it did not affect the pipeline sector. The Board is prepared to accept this view held by the parties and include this clarity note in the appropriate unit of employers. In so doing we would note that none of the individual employers served with notice of this application made mention of this or any remotely similar problem in any employer intervention filed with the Board. We feel that we should add, at this point however, that even if such an agreement is noted by the Board in the unit of employers, it is not clear how an agreement between the parties presently before the Board can affect the position of an individual employer with respect to his inclusion in or exclusion from the unit of employers at a later date.

10. The Board therefore further finds that all employers of employees for whom the respondent has bargaining rights in the Province of Ontario in the pipelines sector constitutes an appropriate unit of employers for collective bargaining. For the purpose of clarity the Board notes the agreement of the applicant, respondent and intervener that the kind of work presently performed under the utilities contractors collective agreements will continue to be performed under those collective agreements and the kind of work presently performed under pipeline contractors collective agreements will continue to be performed under those collective agreements.

11. In order to determine the number of employers in the unit of employers described in paragraph 10 the Board followed the procedure outlined in The General Contractors' Section of the Toronto Construction Association v. The International Association of Bridge, Structural and Ornamental Ironworkers, Local Union Number 721 et al. [1971] OLRB Rep. 562 (Sept.) The representations by the various employers in their filings were not challenged by either the applicant or the respondent. The total number of employers served with notice of the application was forty-two. These comprise twenty-five employers on the Revised Schedule 'E' and seventeen employers on the Revised Schedule 'F' (following the procedure used at the hearing in this matter employers are herein referred to with the number they were assigned on these Revised Schedules, e.g., E-23 or F-5). As a result of the various filings and representations made to the Board the following employers were removed from the revised lists of employers prepared by the examiner:

Joyce & Western Limited - E-23
- Because this was a duplication of another employer appearing elsewhere on the list;

G.I. Russell & Company Limited - E-15
- Because on its representations it states that it has not been a pipeline contractor for several years;

Ben Keiller Pipeline Contractor - F-9
- Because the Board has been unable to locate this employer and the parties agree that it is not in business;

Seneca Pipeline Construction Limited - F-16
- Because the parties agree that it is not in business.

12. Several employers have not made filings in this

matter. These employers appear on the list of employers presented to the Board by the respondent. The respondent has indicated that although they are not members of the applicant association they have accepted the association agreement as a collective agreement binding upon their employees. Three of these employers, according to the list filed by the respondent have been engaged in construction covered by this application during the year immediately preceding September 28, 1971, the date of the making of the application. Thus, the following employers are included on the final Schedule 'E'. These are:

J.W. Cain Limited - E-4
Sombra Welding Limited - E-18
John Vail Pipeline Contractors - E-22

The remaining employer who refused to file was indicated by the respondent as not having worked within the one year period immediately preceding the date of the making of this application and is therefore placed on the final Schedule 'F'. This employer is Mannix Company Limited - F-10.

13. Two employers appearing on the Revised Schedule 'F' have not made filings. The applicant has submitted evidence of representation on their behalf and made representations that these employers are bound by the collective agreement between the applicant and the respondent. However, both the applicant and the respondent agree that these employers have not worked in the area and sector involved in this application during the year preceding the making of the application. These employers are therefore included on the final Schedule 'F':

Inter-Provincial Construction Limited - F-8
Ratzlaff Poole Contracting Limited - F-15

14. Two of the employers in their employer interventions filed in this matter have indicated that the respondent trade union is not entitled to bargain on behalf of their employees in the area and sector which is the subject matter of this application. The applicant and the respondent have not challenged this representation although given ample opportunity to do so. On the basis of these representations the Board is therefore prepared to remove these employers from the revised list of employers. These employers are:

Spiers Brothers Ltd. - E-19
Square M Construction Limited - F-17

15. When the Revised Schedule 'E' and Revised Schedule 'F' were drawn up by the examiner appointed by the Board in this matter those employers who it is thought had worked in the Province and in the pipeline sector in the year before the application was made were placed on Revised Schedule 'E', and those who it is thought had not so worked were placed on a Revised Schedule 'F'. In the individual filings made by the employer interveners in Form 68 two employers on the Revised Schedule 'E' have indicated they had not worked in the relevant yearly period and one employer on the Revised Schedule 'F' indicated that it had worked in the relevant yearly period. These statements have not been challenged by either the applicant or the respondent. On the basis of the filings by the individual employers Beaver Pipeline Construction Limited - E-3 and Pentzien Canada Limited - E-14 will be placed on the final Schedule 'F', and Canadian Bechtel Limited - F-1 will be placed on the final Schedule 'E'.

16. In accordance with the foregoing considerations the Board has compiled a final Schedule 'E' and a final Schedule 'F'. The Board has taken as the correct name of each individual employer the name stated in Form 68 filed by the employer intervener. The final Schedule 'E' containing twenty-one employers is as follows:

Antagon Construction Co. Ltd.
Banister Pipelines Ltd.
J.W. Cain Limited
Canadian Bechtel Limited
Cliffside Pipelayers Ltd.
R.L. Coolsaet of Canada Ltd.
Robert J. Fieheller
T.W. Johnstone Company Limited
Joyce-Leonard Canada Ltd.
McDace Limited
Pe Ben Contractors - Division of Pe Ben Industries Limited
Pemrow Pipelines Construction Ltd.
Perini Pacific Limited (Majestic Construction Division)
Sartori & Son Co. Limited
Robert B. Somerville Company Limited
Sombra Welding Limited
Superior Pipe Line Contractors Ltd.
Universal Pipe Line Welding Ltd.
John Vail Pipeline Contractors
Wiley Oilfield Hauling Ltd.
Williams Pressure Service Ltd.

The final Schedule 'F' containing fifteen employers is as follows:

Beaver Pipeline Construction Limited
Catre Pipeline, A Division of Catre Industries Ltd.
C.S.I. Hydrostatic Testers
Curran Construction Ltd.
Dillingham Pipeline Contractors Limited
H.B. Contracting Ltd.
Huron Pipelines Limited
Inter-Provincial Construction Limited
Mannix Company Limited
Marine Pipeline Limited
Northern Construction Company, Division of Morrison - Knudson Company Inc.
Pan-Cana Associated Contractors Ltd.
Pentzien Canada Limited
H.C. Price of Canada Ltd.
Ratzlaff Poole Contracting Limited

The Board finds that the number of employers on the final Schedule 'E' totalling twenty-one employers is the number of employers to be ascertained by the Board under section 115(1)(a) of the Act.

17. On the basis of the written evidence of representation considered above and on the basis of all the evidence before us the Board finds that on the date of the making of this application the applicant represented seventeen of the twenty-one employers ascertained as the number of employers under section 115(1)(a) of the Act. The seventeen employers so represented by the applicant 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 employers' organization.

18. None of the employers who filed an employer intervention has claimed that the payroll period for the week immediately preceding September 28, 1971, the date of the making of this application, was not representative for the purpose of determining the number of employees in their employ. The Board is therefore of the opinion that the weekly payroll period immediately preceding September 28, 1971, is satisfactory for the purposes of section 115(1)(c) of the Act.

19. On the basis of all the evidence before it and in accordance with the foregoing consideration the Board finds that there were 551 employees affected by the application. The 551 employees is the number of employees to be ascertained

by the Board under section 115(1)(c) of the Act.

20. The Board finds that the seventeen employers represented by the applicant employers' organization employed a total of 548 employees in the weekly payroll periods determined in paragraph 17 as the payroll period for the purposes of section 115(1)(c). 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).

21. Having regard to all 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 10 and in accordance with the provisions of section 115(2) of the Act, for such other employers for whose employees the respondent may after September 28, 1971, obtain bargaining rights through certification or voluntary recognition in the geographic area and sector set out in the appropriate unit of employers.

August 10th, 1972

"O. B. Shime"
for the Board