NOVEMBER 2, 1972

File No. 1189-71-R

ONTARIO LABOUR RELATIONS BOARD

Between:

Mechanical Contractors Association Hamilton,

Applicant,

- and -

The United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada, Local Union 67,

Respondent,

- and -

Metropolitan Hamilton House Builders' Association,

Intervener #1,

- and -

Pipe Line Contractors Association of Canada,

Intervener #2.

BEFORE: G.W. Reed, Q.C., Chairman, and Board Members E. Boyer and F.W. Murray.

APPEARANCES AT THE HEARING: W.S. Cook and F.C. Whyte for the applicant; Stanley Simpson and Trevor Byrne for the respondent; no one appearing for intervener #1; no one appearing for intervener #2; Gerald Vandezande for Christian Labour Association of Canada; John Fenton and William S. Knox for Amalgamated Metal Industries Ltd.

DECISION OF THE BOARD:

1. This is an application for accreditation by the Mechanical Contractors Association Hamilton for accreditation as the bargaining agent for a group of employers. The applicant employers' organization and the respondent trade union are parties to a collective agreement dated July 8, 1971, which runs from June 28, 1971 to April 30, 1973. This agreement is binding on more than one employer in the area and sectors which are the subject matter of this application.

The Board therefore finds that it has the jurisdiction, pursuant to section 113 to entertain this application.

2. The applicant has filed a true copy of the constitution of the Mechanical Contractors Association Hamilton. The constitution was enacted on September 8, 1965, and ratified by the members on that date. The constitution was subsequently amended and such amendment in its present form contains inter alia the following clauses under the heading "Objects":

OBJECTS

(a) to establish and promote a general employer-employee policy which will lead to a sound and harmonious relationship with any bargaining agent representing employees of members of the Association, or non-members of the Association who authorize the Association to act on their behalf;

...

(c) to represent all members and non-members who authorize the Association to act on their behalf in the negotiation, general application and administration and the interpretation of collective agreements and in the arbitration of any labour disputes;

(d) to represent members and non-members who authorize the Association to act on their behalf in their relations with professional bodies and related associations;

...

(h) to represent, take an interest in or assist in any action brought by any members or non-members which action involves a matter of policy or principle or interest to the Association;

...

(j) to represent the members and non-members who authorize the Association to act on their behalf before legislative committees, boards of inquiry, commissions and other similar bodies;

(k) to become an accredited employers' organization under The Labour Relations Act and to regulate the regulations between employers and employees in the construction industry and to represent such employers in collective bargaining with any sector or sectors of the construction industry in any

geographic area or areas as defined under the Labour Relations Act, or is determined by the Labour Relations Board;

(l) to do all things as are necessary or incidental to the promotion and attainment of the objects set out above.

On the basis of the evidence the Board is satisfied that the applicant association 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. It is convenient here to deal with the argument of the respondent that the Board must not accredit the applicant because of section 115(5) of the Act which provides:

> 115.-(5) The Board shall not accredit any employers' organization if any trade union or council of trade unions has participated in its formation or administration or has contributed financial or other support to it or if it discriminates against any person because of his race, creed, colour, nationality, ancestry or place of origin.

The respondent submits that it has participated in the applicant's formation or has contributed financial support to the applicant.

4. In support of its submission the respondent relies on Articles 12, 13, 14 and 15 of the collective agreement between the two parties, which articles provide as follows:

ARTICLE 12

HEALTH AND WELFARE CONTRIBUTION

Each employer shall contribute to the Local 67 welfare plan for each hour's pay earned by each of his employees a sum equal to:

on June 28, 1971	....	.15¢
on May 1, 1972	....	.30¢

The fund shall be administered by a Board of Trustees to be appointed by the union.

ARTICLE 13

PENSION PLAN CONTRIBUTION

Effective January 1, 1972, each employer shall contribute to the Local 67 Pension Plan a sum equal to twenty-five (.25) cents for each hour's pay earned by each of his employees. The pension plan shall be administered by a Board of Trustees to be appointed by the Union under a trust agreement to be drawn up by the union as soon as possible.

ARTICLE 14

SUPPLEMENTARY UNEMPLOYMENT BENEFIT

Each Contractor shall contribute to the Local 67 Supplementary Unemployment Benefit Fund a sum equal to ten (10) cents for each hour's pay earned by each of his employees.

The Fund shall be administered by a Board of Trustees to be appointed by the Union.

ARTICLE 15

PROMOTION AND EDUCATION FUND

Each Contractor shall contribute to the Promotion and Education Fund established by the Association to encourage increased employment among members of the Union and to advance the Industry, a sum equal to five (5) cents for each hour's pay earned by each of his Employees. The Fund shall be administered by the Board of Directors of the Association.

5. Pursuant to these articles, contractors, bound by the agreement, make payments for health and welfare, supplementary unemployment benefits and the promotion and education fund to the Excelsior Life, which in turn totals up contributions and forwards a list of these, along with a cheque for the total amount, to the Hamilton Trust Company. This latter company deposits the cheque in one account and from the list provided by Excelsior Life, issues cheques to each of those funds. In the case of the Promotion and Education Fund, this appears to be the general account of the applicant association. It seems clear from Exhibit No. 11, the applicant's financial statement for the year ended March 31, 1972, that over 90% of the applicant's receipts for 1971-72 came from contributions by employers under Article 15, and it is a fair inference that such funds were used, in part, to defray expenses incurred in connection with the applicant's intention to seek to become an accredited employers' organization.

6. Counsel for the respondent first submitted that, having regard to the similarity of language in the four articles of the collective agreement, and, in particular, the method of computing the amounts contributed to the four funds, the amount contributed to the Promotion and Education Fund was really a contribution by employees. He conceded, however, that the fund in Article 15, unlike those provided for in Articles 13 and 14, was established by the applicant. Counsel made no attempt to show by direct evidence that the amount contributed by an employer to the Promotion and Education Fund was really a contribution by his employees which, if not made, would have resulted in an additional five cents an hour in wages for each employee. Thus, there was no evidence called to show that employees paid income tax on this amount. While it is true that one of the purposes of the fund is to encourage increased employment among members of the union, this does not lead inevitably to the conclusion that the contribution is therefore from employees. Another purpose is to advance the industry, and further, increased employment among members is also of benefit to the employers because, of course, it means more contracts for employers. The plain fact of the matter is on the basis of the materials before us we would be indulging in sheer speculation in finding that these amounts were employee contributions and, in these circumstances, we are unable to conclude that the sums contributed to the Promotion and Education Fund are contributions by employees. Thus, it becomes unnecessary to determine if the sums contributed were really employee contributions because, of course, section 115(5) deals with union, not employee, support.

7. The respondent's second argument is as we understand it that if the sums contributed are not the employees' own money, nevertheless one of the purposes of the fund is to benefit the employees in encouraging increased employment among union members. It is argued that Article 15 gives to members of the union "almost" a position of a cestui que trust, in any event, a real interest in how the Promotion and Educational Fund is used and that interest constitutes an "involuntary contribution" to the applicant association. Further, since the respondent union has participated in the setting up of the fund, it thereby contributes financial or other support to the applicant.

8. At this stage two observations appear to be in order. In the first place on an application for accreditation it is not the function of this Board to be concerned with whether the fund provided for in Article 15 of the collective agreement between the applicant and the respondent has or has not been used for the purposes set out in the article. We make this observation because of the nature of some of the questions put by counsel for the respondent to Mr. Whyte, the Executive Director of the applicant. If the respondent believes that its interests are in jeopardy, no doubt it has an appropriate remedy under the collective agreement or before another forum.

9. Secondly, we think it worth observing that in advancing the argument of financial or other support to the applicant, the respondent is in one sense a party to the acts which it is alleged prohibit the Board from accrediting the applicant association. While such conduct is not expressly forbidden by the Act, it is clear from section 115(5) that it must be regarded as undesirable conduct at the very least. In a sense, therefore, the "clean hands" doctrine is brought into play, at least to this extent, that the respondent should be required to establish that the matters on which it relies clearly fall within section 115(5).

10. With this background let us now examine the "involuntary contribution" argument in more detail. As we understand the argument of counsel for the respondent, it proceeds along the following lines: If the contributions to the Promotion and Education Fund are not those of the employees but rather of the employers, nevertheless the fund is set up in part at least for the benefit of the employees. Therefore the employees have a real interest in the fund. Thus, when the applicant association uses those funds to assist it in making the application for accreditation it is using money in which the employees, and therefore the union which is made up of the employees, have a real interest. This "involuntary contribution" constitutes financial or other support within the meaning of section 115(5) of the Act. Furthermore, the respondent union in agreeing to such a clause as Article 15 of the collective agreement also may be said to make a contribution of financial or other support to the applicant.

11. Counsel for the respondent also argued that the use of these funds by the applicant to make the present application was in violation of Article 15 of the agreement. Counsel for the applicant countered with the argument that one of the purposes of the fund was "to advance the industry" and that the legislation establishing accreditation of employer organizations was designed to strengthen employers' organizations in respect of collective bargaining. A stronger employers' organization would, in turn, bring about more stability in the collective bargaining scene and this was surely one means of "advancing the industry". As we indicated above, we do not believe it is the function of the Board to determine whether there has been a breach of Article 15. However, it appears to us that the argument of counsel for the respondent does not stand or fall on whether or not the funds were used by the applicant in violation of Article 15. If we assume that the employees do indeed have an interest in the funds, then the funds have in fact been used by the applicant and the question is, does such use, whether in violation of Article 15 or not, constitute support within the meaning of section 115(5)?

12. Can it be said that the "involuntary contribution", which it is argued the respondent trade union is making to the applicant in the present case, is likely to impair or make suspect the ability of the applicant to fulfil its duties and responsibilities as an accredited employers' organization? We are not persuaded that such is the case. We are not dealing here with any concrete or direct contribution, if it is a contribution, but rather with something which is "involuntary" and indirect. Furthermore, as was noted above, anything which advances the industry or encourages increased employment among members is as much for the employers' benefit as it is for the employees' or trade union's benefit. In these circumstances, we fail to see how it can be said that the applicant's ability to fulfil its duties and responsibilities as an accredited employers' organization would likely be impaired or suspect. We therefore find that the "involuntary contribution", if indeed it be one, does not constitute the type of support within the meaning of section 115(5) which would prohibit the Board from accrediting the applicant.

13. The "involuntary contribution" argument assumes, of course, that the respondent trade union has in fact made a contribution and in dealing with that argument we have proceeded on that assumption. Without in any way attempting to make any formal findings with respect to the meaning of Article 15 of the collective agreement, it is clear from that article that the Promotion and Education Fund is intended to serve a double purpose. We are in considerable doubt as to whether either purposes can be said to amount to a contribution or support by the trade union or whether the signing of the agreement containing such a clause by the trade union in itself constitutes support. As we pointed out earlier, in the circumstances here under consideration, it is for the respondent to satisfy the Board that the matters on which it relies clearly fall within section 115(5) and we are not so satisfied. In the result therefore, we find that section 115(5) does not prohibit the Board from accrediting the applicant.

14. The applicant also filed with this application documents entitled "EMPLOYER AUTHORIZATION" which read in part as follows:

THE LABOUR RELATIONS ACT

EMPLOYER AUTHORIZATION

> "The undersigned...appoints the Mechanical Contractors Association - Hamilton...to represent the Employer as the bargaining agent for itself and all other employers in regard to the employees covered by the collective agreement with Local 67 - United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the

United States and Canada in the following area(s) and sector(s) :

See Appendix "A" attached.

Sectors : Commercial, Residential, Institutional Industrial (Jointly or Separately)

The Employer further appoints the Association as its agent and representative to make an Application for Accreditation under the Labour Relations Act of the Province of Ontario for the geographic area(s) and sector(s) above mentioned."

15. These documents are signed by the employer and attached to each document is an Appendix "A" which sets out the geographic area which is the subject matter of this application. In addition to these documents the applicant also filed a list of employers setting out the name, address and telephone number for each of the employers on whose behalf an Employer Authorization 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 46 employers.

16. The constitution filed by the applicant taken together with the employer authorizations filed as evidence of representation vest sufficient authority in the applicant to enable it to discharge the responsibilities of an accredited employers' organization on behalf of those employers whom the applicant seeks to represent.

17. The applicant seeks to combine the commercial, industrial and institutional sector with the residential sector. The respondent is in agreement with this proposal. The only opposition comes from intervener #1, the Metropolitan Home Builders Association. The Board permitted intervener #1 to participate in the proceedings despite the fact that neither it nor any of its members had any bargaining relationship with the respondent union. The Board did so because the accreditation procedures are still in their experimental stages, because it has permitted "disinterested parties" in other accreditation cases to take part in the proceedings, and finally because the Board considered intervener #1 might have evidence which would be helpful in dealing with the matter at hand.

18. The applicant rests its case on the fact that the current collective agreement of the respondent union with the applicant covers both sectors and that some employers covered by the agreement do work in both sectors. Admittedly, such work in the residential sector is restricted, in the evidence before us, to a little custom housing, jobbing and repairs, but the employers performing such work also work in the commercial, industrial and institutional sector. In other words, there is

interchange of some employers between the two sectors and regardless of the sector the employees are covered by the same collective agreement.

19. On the other hand, it is clear that there is a very large volume of sub-division work and apartment building carried on in the Hamilton area and that virtually none of this work is done by employers who would be affected by this accreditation application. A very large proportion of this work is done by members of intervener #1. It was submitted by that intervener that although its members would not be affected directly by any accreditation order, since neither the Association nor any of its members had a bargaining relationship with the respondent union, it could be indirectly affected in the following manner. It would be open to the accredited employers' organization and the union to negotiate a high rate for the residential sector and this would in turn become an "organizing tool" for the respondent union in that sector which it would appear is largely non-unionized.

20. We have difficulty in finding merit in this last submission. In our view it would be open to the applicant and the respondent to do this whether or not the applicant was accredited. In any event, even if intervener #1 is right, we are unable to see how this becomes a valid objection under the legislation if the applicant is otherwise entitled to be accredited for the residential sector. Furthermore, the argument is, in any event, speculative in nature, and in all the circumstances, we decline to accept it as a reason for refusing to combine the two sectors.

21. An argument against such a combination which was not made by the parties but which we have nevertheless considered, concerns the extent of work performed by employers affected by this application in the residential sector. Admittedly, this amounts to only an insignificant portion of the total work performed in this sector. Nevertheless, the collective agreement in question does cover such work and some employers bound by the agreement do work in both sectors. If the residential sector is not included, then for the existing contract the applicant in its accredited capacity would administer that part of it in the one sector but not in the other. Further agreements would have to be negotiated separately for the two sectors and, of course, with different consequences flowing therefrom. Thus, one day an employer might be operating under one set of rules and under another on the next day. In fact, this could happen on the same day. In the event of a lawful strike or lockout the union would be entitled to bargain with individual employers in the residential sector and not in the industrial sector. Similarly, the union would be entitled to lawfully supply men to the residential sector but not to the industrial sector.

22. The question of combining sectors or parts thereof is a matter of discretion for the Board under section 114. Up to the present time the Board has had little experience in dealing with this question. In one case the Board refused to combine sectors (The Ontario Erectors Association v. International Association of Bridge, Structural and Ornamental Ironworkers, Local Union 721 et al [1971] OLRB Rep. (Aug.) 522 at 525), and in another (The General Contractors' Section of the Toronto Construction Association v. International Association of Bridge, Structural and Ornamental Ironworkers, Local Union 721 et al [1971] OLRB Rep. (Nov.) 719 at 721), the Board acceded to such a request. These cases do not appear to be of assistance in the present application. On balance, we do not, on the basis of the evidence before us, see any substantial reasons for refusing to combine the sectors requested in this case. Accordingly, the Board further finds that all employers of employees on whose behalf the respondent has bargaining rights in the following area, starting at the junction of Lake Ontario and the Seventh Line in the Town of Oakville, then North-west to the Queen Elizabeth highway, then the Eighth Line north-west to Highway Number 401 just beyond Hornby, join this point to Freelton on Highway No. 6, then north-west on Highway Number 6 to the Wellington-Wentworth County Line just south of Puslinch, then follow the Wellington-Wentworth County Line generally westerly to where it meets the Waterloo County Line just east of Galt, from this point follow the Wentworth County Line generally south to where it angles south-east to North Senca on Highway Number 6 just north of Caledonia, from this point follow Highway Number 6 to Port Dover, then follow the Lake Erie Shoreline to the border line between South Cayuga and Dunn Township in the County of Haldimand, just east of the Village of South Cayuga, then north to the Lincoln County Line at Caistorville, then north-west along the Lincoln-Haldimand County Line to the point where it meets the Wentworth County Line then to Lake Ontario, follow the shoreline of Lake Ontario to the starting point at Oakville, in the Commercial, Industrial and Institutional Sector and Residential Sector, constitute an appropriate unit of employers for collective bargaining.

23. In an application for accreditation section 115(1) of the Act requires the Board to ascertain certain numbers in order to make a "double majority" determination of the wishes of employers in the unit of employers. This raises the preliminary question of who is in the unit of employers? The Board's Rules of Procedure require the respondent trade union to file lists of employers with whom it has a collective bargaining relationship relating to the geographic area and sectors which are the subject matter of the application. These lists, together with the lists filed by the applicant set out the names of all the employers, which the applicant and the respondent claim have an interest in the proceedings. After a consultation between the parties and a Board examiner, the Board prepares a list of employers on the basis of the materials

before it; these are in the form of Revised Schedule "E" and Revised Schedule "F". Revised Schedule "E" contains the names of all those employers which the parties claim are in the unit and who have had employees in the year preceding the application, and thus the group of employers whose wishes are considered in making the accreditation determination. Revised Schedule "F" contains the names of those employers in the unit but who have not had employees within such yearly period. Each such employer is assigned a number on the schedule and to avoid confusion the practice is to refer to this number together with the name of the employer when referring to a particular employer. The Revised Schedules taken together thus set out the names of all employers which according to the representations of the applicant and respondent are affected by any possible accreditation order. These schedules also make a preliminary assessment as to which employers fall into the category of employers set out in section 115(1)(c) as the employers who determine the representative status of the applicant.

24. Having determined all those employers who might have an interest in the application the Board then requires the Registrar to serve each of these employers with notice of the application in Form 67. Section 87 of the Board's Rules of Procedure requires that each employer given such notice file an Employer Intervention in Form 68 together with a completed Schedule "H". The Employer Intervention is the vehicle by which an individual employer has the opportunity to make his representations to the Board. It may be that some employers take the position that they have no representations to make concerning the application, and thus they ignore the mandatory directive in section 87 of the Board's Rules of Procedure. The result is that the Board would not have sufficient materials before it to make the determination required in section 115(1) of the Act. The Board has therefore adopted the practice of utilizing its field staff to contact the various employers who have failed to make the required filings, in attempts to obtain the necessary information. This information is then treated as the representations of the individual employers with respect to the various matters to be dealt with by the Board. Unfortunately, despite the repeated efforts of the Board's staff to contact certain employers there remains a number of employers who have not or will not make the filings required by the Board's Rules. These employers have been given detailed notice of the application and have been warned that the Board may dispose of the application on the basis of the materials then before it if the individual employer fails to make the required filings. In these instances the Board proposes to rely on the representations and filings of the applicant and the respondent in order to make the determinations required by the Act. In the present case, the number of employers listed on Revised Schedule "E" was 67 and on Revised Schedule "F" was 52. These employers were served with notice of the application and a response was received from 106 in the form of a direct filing with the Board or by filing

the information with a Board member of the Board's staff. The remaining 13 employers have not made such a filing and are dealt with in paragraph 27 below.

25. Section 115(1) requires the Board to make a number of significant determinations with respect to each employer served with notice of the application. Where the individual employer has made the required filings the Board must consider the position taken by each of the three parties concerned, the applicant, the respondent and the particular employer in question. Where there is agreement amongst these three parties, no problem arises in making the various statutory determinations required by the Act. On the other hand, the Board may be faced with conflicting positions as to the findings the Board should make with respect to an individual employer. When faced with such conflicting representations, in the absence of evidence to the contrary, the Board proposes to rely on the representations made by the individual employer as to how that individual employer should be treated for the purposes of section 115. Thus, if either the applicant or the respondent chose to challenge the position taken by an individual employer it is incumbent upon them to present the Board with some evidence upon which the Board can make the proposed finding. The individual employers have been given notice of the initial hearing in this matter together with a warning that unless they attend the hearing the Board may dispose of the application without considering the representations set out in the employer intervention (see Form 67). Thus, the employer who takes issue with the statement in paragraph 3 of Form 67, that he may be found to be an employer in the unit of employers, has been put on notice that the representations contained in Form 68 may not be enough, and in particular, if the applicant or the respondent have evidence to contradict the representations contained in a Form 68, the individual employer ignores the warning in Form 67 at his own peril.

26. Based on the materials filed by the applicant and the respondent, Revised Schedules were drawn up. These schedules form the list of employers served with notice of the application since on materials then before the Board it appeared they might be affected by the application. The Revised Schedule "E" contained the names of 67 employers and Revised Schedule "F" contained the names of 52 employers. Following the Board's regular practice in such cases, employers are referred to not only by name but by their number on these Revised Schedules, e.g., E-7, F-4. The Board has also taken the correct name of each employer as that shown on Form 68. During the proceedings, an Employer Intervention in Form 68 was also received from John A. MacDonald Plumbing and Heating Ltd., which employer did not appear on the Revised Schedules and was added as Employer Number E-68.

27. During the course of the proceedings in this matter, the applicant and the respondent agreed that 11 employers from

which no filings had been received should be removed from the list as not properly in the unit of employers. These employers thus removed are:

E-45	Mountain City Plumbing & Heating Ltd.
E-47	Brian Patterson Ltd.
F-4	Allied Mechanical
F-6	Amco Furnace Contractors Ltd.
F-7	American Moistening Company
F-16	Cudney Industrial Ltd.
F-26	Kineticon Company
F-36	Mustang Construction Ltd.
F-42	Samco Plumbing & Heating
F-48	Alfred A. Stroud Ltd.
F-49	Summit Plumbing & Heating Ltd.

It also appears that employer E-49, Poly Acoustics Ltd., is the same employer as F-39, Polycoustics Limited, and employer E-49 is also removed from the list of employers.

28. In agreement with the filings by East End Welding Limited (F-19) and K.S.F. Chemical Processes, (F-28), the applicant and respondent agree that these employers are not in the construction industry. These employers are therefore removed from the list of employers in the unit of employers. Also in accordance with filings made by individual employers the applicant and respondent have agreed that Walker Plumbing and Heating (F-51), an employer in bankruptcy, is removed from the list and that the Hydro Electric Power Commission of Ontario (E-29) is not an employer in the unit of employers.

29. Two of the employers on the Revised Schedule "F" are removed because it appears that the bargaining rights of the respondent with respect to these employers arose after the date of the making of this application. These employers are removed from the list of employers, but are nevertheless bound by this order (see section 115(2)). These two employers are D.W. Ferguson & Company Ltd., (F-21) and Midlakes Piping Ltd., (F-35).

30. Resulting from the filings of certain individual employers, the applicant and the respondent have subsequently agreed with the representations of these employers contained in their filings with the Board. Thus, certain employers appearing on the Revised Schedules have been removed for the following reasons:

- the members of the Pneumatic Control Systems Council, which have an agreement with The United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada rather than Local 67. These employers are:

E-7	Barber-Colman of Canada Limited
E-27	Honeywell Controls Limited
E-31	Johnson Controls Ltd.
E-50	Powers Regulator Company of Canada Limited

- an employer who is bound by an agreement between the Pipeline Contractors Association of Canada and The United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada rather than Local 67:

E-14	Cliffside Pipelayers Ltd.

- a number of employers who are signatory to the Canadian National Construction Agreement with The United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada:

E-5	A.E. Anderson Limited
E-6	Babcock Wilcox Canada Ltd.
E-17	Bravo Construction Limited
E-18	Durall Construction Limited
E-28	James Howden & Parsons of Canada, Limited
E-39	Arthur G. McKee & Company of Canada, Limited
E-59	W.A. Stephenson Construction Company Limited
E-62	Taylor Engineering & Construction Company Limited

31. One employer served with notice of this application has failed to file an employer intervention. The respondent has submitted a copy of its collective agreement with this employer. On the basis of this filing the Board finds that Mid-Weston Mechanical Company Ltd., (E-41) is an employer in the unit of employers. However, the Board has no basis for finding that this employer has had employees within the year immediately preceding the making of this application. This employer will therefore be included on Final Schedule "F".

32. A number of employers indicated in their filings in Form 68 that the respondent was not entitled to bargain on behalf of their employees in the area and sector which are the subject matter of this application. One such employer appeared at the hearing and gave evidence in this regard. On the basis of the evidence before the Board the Board finds that John Fraser Plumbing & Heating Ltd., (F-22) is not an employer in the unit of employers. Another employer, Schill & Beninger Limited, (F-43) stated in his reply that the respondent is not entitled to bargain on behalf of its employees in the area and sectors under consideration. The respondent submitted a collective agreement with this employer

dated November 22, 1966. However, representations of the Christian Labour Association of Canada appeared at the hearing and informed the Board that they had been certified with respect to certain employees of this employer on July 28, 1967. An examination of the Board's file as revealed to the parties at the hearings indicates that the employer did not inform the Board of the collective agreement with Local 67 in these proceedings. The certificate dated July 28, 1967 covers the geographic area of the Counties of Lincoln, Welland and Haldimand. The Board therefore finds that the respondent is only entitled to bargain on behalf of this employer's employees in its regular geographic area except those parts falling within the Counties of Lincoln, Welland and Haldimand. The Board therefore finds that Schill & Beninger Limited is an employer in the unit of employers, except for its operations in the Regional Municipality of Niagara and the County of Haldimand. Since it appears that this employer has not had employees in the area covered by this application within the several years preceding the making of this application this employer is included in Final Schedule "F".

33. A number of employers made the representation to the Board by way of the Form 68 filed in this matter that the respondent was not entitled to bargain on behalf of their employees. In response to this the respondent has submitted copies of signed collective agreements relating to a number of these employers. These employers did not participate further in these proceedings other than to make the submissions contained in their Form 68.

34. With respect to these employers and on the basis of the evidence before it the Board finds that -

E-42	The Mitchell Construction Company (Canada)
E-52	Quality Plumbing & Heating Co.
F-2	Ainsworth Electric Co. Ltd.
F-3	Ajax Engineers Limited
F-10	Bestway Electrical Contractors (Hamilton) Ltd.
F-13	Bridge & Tank Company of Canada Limited - Hamilton Bridge Division
F-23	Robert Globe Electrical Limited
F-25	T. Kennedy Plumbing & Heating
F-29	Lackie Brothers Limited
F-30	Lampert Plumbing Limited
F-32	J.H. Lock & Sons Limited
F-38	Wm. Petrie & Sons Limited
F-40	Pyrotherm Equipment Limited
F-44	Scotts Plumbing & Heating Ltd.
F-45	Silvio Construction Company Limited
F-50	Union Boiler Company of Hamilton Limited

are employers in the unit of employers. Those employers originally on the Revised Schedule "F" will be included on Final Schedule "F".

However, with respect to the two employers originally on Revised Schedule "E", there appears to be no grounds for not accepting the representation in the Form 68 filed by these employers. The Board therefore finds that E-42 and E-52 will be included in Final Schedule "F".

35. With respect to one employer (E-55) which claimed the respondent was not entitled to bargain on behalf of its employees, the applicant submitted evidence at a hearing of the Board that this employer was a member of the applicant at the time when a collective agreement was negotiated with the respondent. On the basis of this evidence the Board finds that this employer was bound by the agreement so negotiated. Notwithstanding his subsequent withdrawal from membership in the applicant, having regard to section 43 of the Act the Board finds that the respondent is entitled to bargain on behalf of the employees of this employer affected by this application. The Board therefore finds that Saynor Plumbing & Heating Ltd., (E-55) is an employer in the unit of employers. This employer is therefore included in Final Schedule "E".

36. Two employers, Ward Electric & Mechanical Limited, (E-63) and Esto Plumbing & Heating, (F-20) indicated in their filings that the respondent was not entitled to bargain on behalf of their employees. Neither the applicant nor the respondent could provide the Board with any evidence to contradict this representation. The Board accepts the uncontradicted representations of these employers and accordingly Ward Electric & Mechanical Limited (E-63) and Esto Plumbing & Heating (F-20) have been removed from the list of employers.

37. Having regard to the foregoing considerations the Board finds the following to be the lists of employers in the unit of employers found to be appropriate for accreditation in paragraph 22.

Final Schedule "E"

E-1	Adam Clark Company Ltd.
F-1	S. N. Agnew & Company Ltd.
E-2	Aldershot Industrial Installations Limited
E-3	Allison-Brit Plumbing and Heating Limited
E-4	Amalgamated Metal Industries Ltd.
F-5	Amber Mechanical Limited
E-8	H. Barnes Plumbing and Heating Limited
E-9	Bennett & Wright Contractors Limited
E-10	R. Bowes & Son Limited
E-11	Broom's Mechanical Contracting Limited
E-12	Comstock International Limited
E-13	Casey Mechanical Limited
E-15	Crump Mechanical Contractors Ltd.
F-17	Daplex Plumbing & Heating Ltd.

E-16	Phillip Doyle Limited
F-18	Duncan-Reynolds Limited
E-19	Eastmount Plumbing & Heating Company Limited
E-20	A. E. Fletcher & Son Limited
E-21	E. S. Fox Limited
E-22	Fraser-Drace Engineering Company Limited
E-23	Goodram Bros. Limited
E-24	J. Granzotto Plumbing Ltd.
E-25	S. I. Guttman Limited
E-26	Hoffer Mechanical Company Limited
E-30	Iremo Corporation Limited
E-32	Precipitation Division, Joy Manufacturing Company (Canada) Ltd.
F-27	Kingsleigh Ind. Co. Ltd.
E-34	Lee Wilson Engineering Company of Canada Ltd.
E-35	A. R. Leslie Contracting Ltd.
E-68	John A. MacDonald Plumbing and Heating Limited
F-33	M. A. MacDonald Plumbing & Heating Company
E-36	MacKinnon-Mitchell & Associates
E-37	Mazur Plumbing and Heating Limited
E-38	McLeod Engineering Inc.
E-40	Mechanical Contracting Trades Limited
E-43	Ralph M. Moore Industrial Installations Ltd.
E-44	Morrison Engineering Limited
E-46	Partridge Plumbing & Heating Limited
F-38	Wm. Petrie & Sons Limited
E-51	Process Mechanical Contractors Ltd.
E-54	Rigby Plumbing & Heating Ltd.
E-55	Saynor Plumbing & Heating Ltd.
E-56	Sheafer-Townsend Limited
E-57	Spider Installations Limited
E-58	Harold R. Stark Ltd.
E-60	Robert D. Stewart Mechanical Contracting Limited
E-61	Sutherland-Schultz Ltd.
E-64	Watts & Henderson Limited
E-65	Western Plumbing & Heating
E-66	Whitley Brothers Limited

Final Schedule "F"

F-2	Ainsworyh Electric Co. Ltd.
F-3	Ajax Engineers Limited
F-8	Austin James & Co. Ltd.
F-9	Beaver Engineering Limited
F-10	Bestway Electric (Hamilton) Ltd.
F-11	Black & McDonald Ltd.
F-12	Blenkhorn and Sawle Limited
F-13	Bridge & Tank Company of Canada Limited - Hamilton Drive Division
F-14	Cimco Limited
F-15	Commercial Plumbing & Heating Limited

F-23	Robert Globe Electrical Limited
F-24	Humber Plumbing & Heating Ltd.
F-25	T. Kennedy Plumbing & Heating
F-29	Lackie Brothers Limited
F-30	Lampert Plumbing Limited
E-33	Lamson Conveyors Division
F-31	Lincoln Plumbing and Heating Ltd.
F-32	J. H. Lock & Sons Limited
F-34	Margell Mechanical Contractors Limited
E-41	Mid-Weston Mechanical Co. Ltd.
E-42	The Mitchell Construction Company (Canada)
F-37	J.A. Norton & Company Limited
E-48	Pigott Construction Company Limited
F-39	Polycoustics Limited
F-40	Pyrotherm Equipment Limited
E-52	Quality Plumbing & Heating Co.
E-53	A.J. Reinhardt Limited
F-43	Schill & Beninger Limited
F-44	Scott's Plumbing & Heating Ltd.
F-45	Silvio Construction Company Limited
F-46	Spar Mechanical Contractors Co. Limited
F-47	Steen Mechanical Contractors Co. Limited
F-50	Union Boiler Company of Hamilton
F-52	Williams Welding Canada Limited
E-67	Wood-Towndrow Limited

The Board finds that the number of employers on Schedule "E" totalling fifty is the number of employers to be ascertained by the Board under section 115(1)(a) of the Act.

38. The nature of the written evidence of representation of employers by the applicant was described in paragraph 14 supra. 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-five of the fifty employers ascertained as the number of employers under section 115(1)(a) of the Act. The fifty 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 a majority o the employers in the unit of employers are represented by the applicant employers' organization.

39. 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 the matter of whether these employers represent a majority of the employees involved. By section 115(1)(c) the Board must ascertain the following:

> the number of employees of employers in clause (a) on the payroll of each such employer for the weekly payroll period immediately preceding the date of the application or if, in the opinion of the Board, such payroll period is unsatisfactory for any one or more of the employers in clause (a), such other weekly payroll period for any one or more of the said employers as the Board considers advisable.

Each of the eighty-five employers on Schedule "E" set out in paragraph 37 above has submitted with his employer intervention a Schedule "H" containing the names of his employees, if any, affected by the application. By section 115(1)(c) the relevant weekly payroll period is prima facie the week immediately preceding October 29, 1971, the date of the making of this application. Paragraph 5 of Form 68, Employer Intervention, reads as follows:

> 5. The intervener states that the number of employees on the payroll for the weekly payroll period immediately preceding the date of the application
> *is
> *is not representative of the number of employees affected by this application normally employed by the intervener. (Where the number is not representative, give details)
>
> *Strike out if not applicable.

This, of course, allows the individual employer to make representations to the Board concerning a more appropriate weekly payroll period. On the basis of further materials filed with the Board in this matter the Board is of the opinion that the weekly payroll period for each of these employers should be the period with the number of employees closest to the average of the three lists filed by each employer. The Board considers it advisable to use the following weekly payroll periods for the following employers:

Adam Clark Company Ltd.
weekly payroll period immediately preceding January 22, 1971

Casey Mechanical Limited
weekly payroll period immediately preceding May 21, 1971

Eastmount Plumbing & Heating Company Limited
weekly payroll period immediately preceding August 6, 1971

E. S. Fox Limited
weekly payroll period immediately preceding November 13, 1970

Lee Wilson Engineering Company of Canada Ltd.
weekly payroll period immediately preceding October 18, 1971

MacKinnon-Mitchell & Associates
weekly payroll period immediately preceding August 27, 1971

Process Mechanical Contractors Ltd.
weekly payroll period immediately preceding May 29, 1971

Spider Installations Limited
weekly payroll period immediately preceding August 14, 1971

Wm. Petrie & Sons Limited
weekly payroll period immediately preceding July 30, 1971

For the remaining forty-one employers the Board is of the opinion that the weekly payroll period immediately preceding October 29, 1971 is satisfactory.

40. On the basis of all the evidence before it and in accordance with the foregoing considerations, the Board finds that there were 993 employees affected by the application. The 993 employees is the number of employees to be ascertained by the Board under section 115(1)(c) of the Act.

41. The Board further finds that the thirty-five employers represented by the applicant employers' organization employed a total of 909 employees in the weekly payroll periods determined in paragraph 39 as the payroll period for the purposes of section 115(1)(c) of the Act. 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) of the Act.

42. 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 22 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 29, 1971, obtain bargaining rights through certification or voluntary recognition in the geographic area and sector set out in the appropriate unit of employers.

"G. W. Reed"
Chairman

November 2, 1972