

JANUARY 9, 1973

File No. 1345-71-R

ONTARIO LABOUR RELATIONS BOARD

Between:

Mechanical Contractors Association of  
Toronto,

Applicant,

- and -

Local 46, The United Association of Journeymen  
and Apprentices of the Plumbing and Pipe Fitting  
Industry of the United States and Canada,

Respondent.

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

APPEARANCES AT THE HEARING: W.S. Cook and D.M. Lewis  
for the applicant; L.C. Arnold and Tom Berry for the  
respondent.

DECISION OF THE BOARD:

1. This is an application for accreditation in which the applicant seeks to be accredited as the bargaining agent for certain employers who have a bargaining relationship with the respondent in respect of certain of their employees. The applicant and the respondent are parties to a collective agreement dated June 3, 1971, the term of which extends from May 3, 1971 to April 30, 1973. This agreement is binding on more than one employer in the construction industry. The Board therefore finds that it has the jurisdiction under section 113 of the Act to entertain this application.

2. The applicant filed with this application a document which was identified at the hearing as a copy of the constitution of the Mechanical Contractors Association of Toronto, currently in force. This document indicates that it was enacted by the Association on February 10, 1964, and was successively amended on June 23, 1964, March 31, 1966 and October 21, 1970. Included in the objects of the Association as Article 3(c) and Article 3(j) are the following provisions:

Article 3(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.

Article 3(j)

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 geographical area or areas as defined under The Labour Relations Act, or is determined by the Labour Relations Board.

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

3. In support of its application, the applicant filed documentary evidence of representation on behalf of one hundred and ten employers. The evidence is entitled "Employer Authorization" and in each case is signed on behalf of the individual employer giving such authorization. The authorizations are in a standard form and the effect of such an authorization is to appoint the applicant association to represent the individual employer as bargaining agent in regard to the employees covered by the collective agreement with the respondent in the geographic area and sector of the construction industry which are the subject of this application. The Board is satisfied that the evidence of representation meets the requirements set out in section 96 of the Board's Rules of Procedure, and the Board is further satisfied that the individual employers on whose behalf the applicant has submitted evidence of representation have vested appropriate authority in the applicant to enable it to discharge the responsibilities of an accredited bargaining agent.

4. The applicant, in its application, submitted that the appropriate unit of employers for accreditation is all employers of plumbers and plumbers' apprentices, steam-

fitters and steamfitters' apprentices and welders, in a geographic area corresponding to that in the collective agreement between the applicant and the respondent referred to in paragraph 1 supra. The applicant set out as the sector of the construction industry appropriate for accreditation in this application, "the industrial commercial and institutional, property drains". At the hearing in this matter the applicant took the position that the term "property drains" in the description of the sector of the construction industry was not necessary since the property drains if they related to the industrial commercial and institutional sector then they were part of that sector. The respondent's concern with this was the possible inference that deleting the term property drains might be construed as abandoning a claim to this work. In our view, the term "property drains" does not denote a division of the construction industry determined by work characteristics and cannot therefore be viewed as a sector. Whether a property drain project falls in one sector another will have to be decided on the basis of the facts in that particular case. On the other hand, insofar as these may be the subject of jurisdictional disputes, the Act provides a specific remedy for jurisdictional disputes and it is difficult to see what bearing an accreditation decision can have on the resolution of such disputes. The Board is therefore of the view that the sector of the construction industry appropriate for accreditation in this application is the industrial, commercial and institutional sector. The Board therefore finds that all employers of plumbers, plumbers' apprentices, steamfitters, steamfitters' apprentices and welders for whom the respondent has bargaining rights in the Judicial District of York, that portion of Ontario County lying west of the Pickering Whitby Townships Line, Peel County, that portion of Halton County lying south of Highway 401 and east of the Seventh Line and Dufferin County in the industrial, commercial and institutional sector of the construction industry, constitute a unit of employers appropriate for collective bargaining.

5. In a previous decision of the Board dated July 26, 1972, the Board directed the Registrar to serve the employers on Revised Schedule "E" and Revised Schedule "F" with notice of this application in Form 67. As a result of this direction such notice was sent to one hundred and fifty-eight employers who might have an interest affected by this application. With respect to the lists of employers appearing on Revised Schedule "E" and Revised Schedule "F" it now appears that on the basis of materials before the Board the Board has been unable to effect service of this application on three employers. These three employers

E-20 - Broughton, C.G. Limited  
E-80 - Lawson, A.S. Ltd.  
E-134 - Tri-Canada Limited

will therefore be removed from the list of employers. It further appears that the revised lists contain duplications, in the sense that certain employers appear on both Revised Schedule "E" and Revised Schedule "F". For this reason

F-1 - Brady & Seider  
F-3 - Adam Clark Company Limited  
F-7 - Sayers and Associates Ltd.

are removed from the list as being duplications of

E-17 - Brady & Seidner Limited  
E-2 - Adam Clark Company Limited  
E-119 - Sayers & Associates Limited

respectively.

6. There thus remains one hundred and fifty-two employers to be dealt with on the list of employers. A substantial number of employers, thirty-seven in number, have not filed an Employer Intervention in Form 68, although required by the Board's Rules of Procedure to make such a filing. These employers who have refused to make such filings have received notice of the application and have been cautioned that the Board may proceed in their absence. The Board proposes to deal with these employers on the basis of the various materials filed with it. One such employer

E-107 - Prime Energy Systems Ltd.

is removed from the list because the applicant and respondent agree that this employer is covered by a collective agreement between the Combustion Contractors Association and the respondent, and the employees covered by this agreement are not the same employees covered by the agreement between the applicant and the respondent.

7. The remaining employers all appear on the Schedule "E" and Schedule "F" submitted by the respondent in which the respondent claims to be entitled to bargain on behalf of their employees. The Board therefore finds the following thirty-six employers are employers on the list of employers. These employers who appeared on Revised Schedule "E" will be placed on Final Schedule "E" and those who appeared on Revised Schedule "F" will be placed on Final Schedule "F".

E-5 - Albern Mechanical Limited  
E-8 - Appleton Engineering Co.  
E-9 - Argent Plmg. & Heating Co.  
E-23 - Cairney, Chas, Mech. & Elect. Ltd.  
E-34 - Coppard & Jewett Ltd.  
E-35 - Crawford W.G. Company Ltd.  
E-37 - Desson, T. Company  
E-42 - Duchart, Ian Plumbing & Heating Ltd.  
E-46 - Ember Electric Limited  
E-49 - Erin Engineering  
E-51 - Esto Plumbing & Heating Co. Ltd.  
E-57 - John Fraser Plumbing & Heating Limited  
E-59 - Greenan, C.P.R. & Associates  
E-63 - Happe, F. Plg. & Htg. Ltd.  
E-68 - Ideal Welding Co. Ltd.  
E-70 - Ironside, A. Plg. & Htg.  
E-75 - Kennedy, T. Plg. & Htg. Ltd.  
E-78 - Lamson Conveyors Division  
E-79 - Lampert Plg. & Htg. Ltd.  
E-81 - Long, Robert & Sons Ltd.  
E-83 - MacMaster & Son Plumbing Heating  
E-86 - Martin, James Plg. & Htg. Ltd.  
E-88 - Master Heating Co. Ltd.  
E-103 - Perry, Robt. V. Limited  
E-106 - Porter, Harry Plg. Contrs.  
E-112 - Ritchie Mech. Contrs. (1963) Ltd.  
E-118 - Russell, G.I. & Co. Ltd.  
E-124 - Smith & Martin Limited  
E-125 - Spar Mechanical Contractors Co. Limited  
E-135 - Urban Mechanical Contracting Ltd.  
E-137 - Watson, Bill & Co. Ltd.  
E-139 - Westway Mechanical Contrs. Ltd.  
E-140 - Wexford Plg. & Htg. Ltd.  
E-146 - Wood-Towndrow Limited

F-6 - Ritter Pfaudler Ltd.  
F-8 - D.M. Smith Mechanical Contractors

8. With respect to those employers who did file an Employer Intervention in Form 68, the Board proposes to take as the correct name of the employer, the name set out in the Form 68 submitted to the Board. With respect to certain of these employees the applicant and the respondent are in agreement that the following employers whose filings indicate that the respondent is not entitled to bargain on behalf of their employees, should be removed from the list of employers in the unit because they are party to the collective agreement with the Combustion Contractors Association referred to in paragraph 6.

E-22 - Burns, D.H. Heating Ltd.  
E-26 - Central Burner Services Limited

E-87 - Martin Oakwood Service Company  
E-93 - Moore and Barron Limited

The applicant and the respondent further agree that

E-117 - Rocket Plumbers Ltd.  
E-149 - Yorkdale Plumbing & Heating Ltd.

operate in the residential sector of the construction industry and are thus excluded from the list.

9. With respect to one employer, E-71 - Jacobs, E.G. Contrs. Ltd. - a letter was received by the trustee in bankruptcy for this employer. While this employer may not be affected by this decision, the employer does fall as an employer to be considered in the determinations which the Board is required to make under section 115 of the Act. The applicant and the respondent agree that this employer should be placed on Final Schedule "E". (The parties also agree that the appropriate number of employees for this employer would be four employees, and further that this employer had four employees during the month of April 1971.)

10. There are, however, four employers who indicated that the respondent trade union is not entitled to bargain on behalf of the employees. Notwithstanding that for two of these employers the applicant has submitted evidence of representation, neither the applicant nor the respondent have furnished the Board with any evidence that the respondent is entitled to bargain on behalf of employees affected by this application. The Board therefore accepts the representations of these employers in their Form 68, Employer Interventions, and accordingly

E-7 - Amber Mechanical Limited  
E-38 - Domax Construction Limited  
E-116 - Robson, R.W. Plumbing Limited  
E-143 - Wilson J.H. Construction Ltd.

are removed from the list of employers.

11. On the basis of the foregoing considerations and the filings by individual employers the Board has drawn up the following lists of employers. These employers listed on Final Schedule "E" are those who have indicated that they had employees affected by the application in the year preceding December 3, 1971, the date of the making of this application. Those on Final Schedule "F" have indicated that they have not had such employees.

FINAL SCHEDULE "E"

Acri McGarvey Plumbing and Heating Ltd.  
Adam Clark Company Limited

Agincourt Mechanical Contractors Limited  
Ainsworth Electric Co. Limited  
Albern Mechanical Limited  
Aldershot Industrial Installations Limited  
Appleton Engineering Co.  
Argent Plng. & Heating Co.  
Bacon Engineering Limited  
Bannerman, Lewis Limited  
Barber, G.A., Mechanical (Central) Ltd.  
Beaver Engineering Limited  
Bennett & Wright (Eastern) Limited  
Black & McDonald Limited  
Bradler Mechanical Limited  
Brady & Seidner Limited  
Bramalea Plumbing and Heating Limited  
Breen Mechanical and Electrical Contractors Limited  
Brown & Huston Ltd.  
Cairney, Chas, Mech. & Elect. Ltd.  
Canadian National Exhibition Association  
Comstock International Ltd.  
Cannone Northern Limited  
Cimco Limited  
Clifton, W.G. & Co. Limited  
Commercial Plumbing & Heating Limited  
Consolidated Mechanical  
Conway Heating Ltd.  
Cool-Air Systems Limited  
Co-ordinated Mechanical Contractors Limited  
Coppard & Jewett Ltd.  
Crawford W.G. Company Ltd.  
Denney Bros. Ltd.  
Desson, T. Company  
Donnelley-Ostapec Ltd.  
Downs Mechanical Contractors Ltd.  
Drynan, John T. Plumbing & Heating Limited  
Duchart, Ian Plumbing & Heating Ltd.  
Duncan-Reynolds Limited  
Durcard Mechanical Contractors Ltd.  
Wm. Elliott Ltd.  
Ember Electric Limited  
M. Emsig and Son, Limited  
English and Mould Limited  
Erin Engineering  
Esquire Plumbing & Heating Co. Ltd.  
Esto Plumbing & Heating Co. Ltd.  
Even-Temp Radiant Heating Limited  
Ferguson, D.W. & Company Limited  
Fischback and Moore of Canada Ltd.  
Fleetwood Mechanical Contractors Limited  
Fraser-Brace Engineering Co. Ltd.  
John Fraser Plumbing & Heating Limited  
Gimco Limited

Greenan, C.P.R. & Associates  
Griffiths, H. Company Limited  
Guttman, S.I. Ltd.  
Hahn, Herbert Limited  
Happe, F. Plg. & Htg. Ltd.  
Hi-Grade Welding Company Limited  
Holeck-Vollmer Corp. (Tor) Ltd.  
Huston, S.Q.  
Ideal Welding Co. Ltd.  
C.H. Marler Limited - A/O Industrial Maintenance Co.  
Irema Corporation Limited  
Ironside, A. Plg. & Htg.  
Jacobs, E.G. Contrs. Ltd.  
James, Austin & Co. Ltd.  
Jennings, H. Plumbing & Heating Limited  
Kelson, Geo. A. Company Limited  
Kennedy, T. Plg. & Htg. Ltd.  
Kerstone Contractors Limited  
Lampert Plumbing (Danforth) Limited  
Lamson Conveyors Division  
Lampert Plg. & Htg. Ltd.  
Long, Robert & Sons Ltd.  
MacKinnon, Mitchell & Associates  
MacMaster & Son Plumbing Heating  
Magee, Alex & Sons Ltd.  
Margell Mechanical Contractors Limited  
Martin, James Plg. & Htg. Ltd.  
Master Heating Co. Ltd.  
Maxwell Plumbing & Heating Co. Limited  
Metro Plumbing (1968) Limited  
Harry Mierins Limited  
Monette Mechanical Contractors Limited  
Mothersdale, R. H. Mechanical Contractors Ltd.  
Multi-Tech Services Limited  
Municipal Plumbing & Heating Ltd.  
Nelson Welding Ltd.  
Newmarch Mechanical Limited  
Niagara Mechanical Contractors  
Northview Plumbing Limited  
Norton, J.A. & Company Limited  
Oak Ridge Plumbing & Heating Limited  
Perry, Robt. V. Limited  
William Petrie & Sons Ltd.  
Phecol Electrical and Mechanical  
Philipps, Eduard Limited  
Porter, Harry Plg. Contrs.  
Process Mechanical Contractors Limited  
Quality Plumbing & Heating Co.  
Ram Mechanical Contractors Ltd.  
Reynolds Bros. Mechanical Ltd.  
Ritchie Mech. Contrs. (1963) Ltd.  
Richvale Heating & Cooling Company Ltd.



Robinson, B.A. Plumbing and Heating Limited  
Robinson, Bruce K. Company Limited  
Russell, G.I. & Co. Ltd.  
Sayers & Associates Limited  
Scott, Al Plumbing Contractors Ltd.  
Seymour Plumbing & Heating Contractors Limited  
Sheafer-Townsend Limited  
Sikora Mechanical Limited  
Smith & Martin Limited  
Spar Mechanical Contractors Co. Limited  
Steen Mechanical Contractors Limited  
Stephenson, Q.C. Const. Co. Ltd.  
Taylor Engineering & Construction Company Limited  
Thermotech Mechanical Contracting Ltd.  
Thornber & Brown Mech. Cont. Ltd.  
Thoro Mechanical Contractors Limited  
Treblex Limited  
Urban Mechanical Contracting Ltd.  
Warmington Mechanical Contractors Ltd.  
Watson, Bill & Co. Ltd.  
Watts & Henderson Limited  
Westway Mechanical Contrs. Ltd.  
Wexford Plg. & Htg. Ltd.  
Wiggins, J. & Son Ltd.  
Williams Welding (Canada) Limited  
Wise, Jack Plumbing & Heating  
Woburn Mechanical Contractors Ltd.  
Wood-Towndrow Limited  
Woodward Mechanical Ltd.  
Zentil Plumbing and Heating Ltd. & Co.

FINAL SCHEDULE "F"

Humber Plumbing & Heating Limited  
Superior Engineering Ltd.  
Ritter Pfaudler Ltd.  
D.M. Smith Mechanical Contractors  
Yellow Jacket Welding Co. Ltd.

The Board finds that the number of employers on Final Schedule "E", totalling one hundred and thirty-six, 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 one hundred and three of the one hundred and thirty-six employers ascertained as the number of employers under section 115(1)(a) of the Act. The one hundred and three employers so represented 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 entitlement of the employers' organization to accreditation is based on a "double majority". We have now dealt with the first of the majorities that an applicant must obtain, a majority of employers in the unit of employers. We now turn to determine whether those employers employed a majority of the employees affected by this application. The Schedule "H" which accompanied the Form 68, Employer Intervention, filed by the individual employers sets out the number of employees that the employer intervener has at each job site with details of the location and the type of construction involved. By section 115(1)(c) the relevant payroll period is the weekly payroll period immediately preceding the making of the application, in this case the weekly payroll period immediately preceding December 3, 1971. For those employers who have filed a Form 68 and its accompanying Schedule "H" the Board is satisfied that such a period is satisfactory for the determination in section 115(1)(c).

14. There remains, however, to deal with those employers who have not filed a Schedule "H". These employers have been dealt with in paragraph 7, supra, as employers who have not filed a Form 68. The applicant filed with the Board records from the welfare plan provided for in the collective agreement between the applicant and the respondent. These records, with certain exceptions, relate to the month of April 1971 and indicate for each employer the names of employees and the hours worked during various specified periods. The Board is of the view that for those employers who failed to file a Form 68 with its accompanying Schedule "H", these welfare records submitted by the applicant are materials upon which the Board can base its decision. The Board is therefore satisfied that for these employers listed in paragraph 7 who appear on final Schedule "E" the weekly payroll period immediately preceding December 3, 1971, is an unsatisfactory payroll period. The Board further considers it advisable to use the weekly payroll period for the week immediately preceding April 24, 1971, as the payroll period for determining the number of employees in section 115(1)(c), with the following exceptions:

E-49 - Erin Engineering  
E-106 - Porter, Harry Plg. Contrs.

The appropriate payroll period is the week immediately preceding March 27, 1971.

E-125 - Spar Mechanical Contractors Co. Limited

The appropriate payroll period is the week immediately preceding February 27, 1971. Further, with respect to the employer dealt with in paragraph 9 above, E-71 - Jacobs, E.G. Contrs. Ltd. - the Board considers it advisable to use the weekly payroll period for the week immediately preceding April 24, 1971.

15. On the basis of all the evidence before it and in accordance with the foregoing considerations the Board finds that there were one thousand, five hundred and thirty-three employees affected by the application. The one thousand, five hundred and thirty-three employees is the number of employees to be ascertained by the Board under section 115(1)(c) of the Act.

16. The Board further finds that the one hundred and three employers represented by the applicant employed one thousand, four hundred and twenty-seven of these employees. The Board is therefore satisfied that the majority of employers represented by the applicant employed a majority of the employees as ascertained in accordance with the provisions of section 115(1)(c).

17. Having regard to all 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 December 3, 1971, obtain bargaining rights through certification or voluntary recognition in the geographic area and sector set out in the unit of employers.

January 9, 1972

"D. E. Franks"  
for the Board