

ONTARIO LABOUR RELATIONS BOARD

File No. 1636-71-R

Between:

The Mechanical Contractors Association of
Ottawa,

Applicant,

- and -

The United Association of Journeymen and
Apprentices of the Plumbing and Pipefitting
Industry of the United States and Canada,
Local Union 71,

Respondent.

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Respondent.

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

APPEARANCES AT THE HEARING: James B. Chadwick and H.G.
Burchell for the applicant; no one appearing for the
respondent.

DECISION OF THE BOARD:

1. In these two applications the applicant is
seeking to be accredited as the exclusive bargaining
agent for units of employers who engage in collective
bargaining with the respondents in respect of certain

residential sector of the construction industry, whereas Board File No. 1638-71-R relates to the industrial, commercial and institutional sector of the construction industry. In other respects the applications are similar. At the hearing in this matter the applicant made the request that the Board consolidate these cases. The Board reserved its decision with respect to the consolidation of these matters; however, the two cases were heard together. The reasons for the request by the applicant will be discussed in paragraph 5 of this decision which deals with the appropriate unit of employers for accreditation.

2. The Board is satisfied that no interests are involved which would be prejudiced by an order consolidating these two applications at this time. Accordingly, these applications are hereby consolidated.

3. The applicant in this matter, The Mechanical Contractors Association of Ottawa, is a corporation under Part II of the Canada Corporations Act. Letters Patent of Incorporation were issued by the Secretary of State of Canada on May 6, 1966. The Letters Patent of Incorporation were issued under Part II of the Canada Corporations Act creating a corporation without capital. On July 13, 1971, Supplementary Letters Patent were issued by the Minister of Consumer and Corporate Affairs to The Mechanical Contractors Association of Ottawa, which extended the objects of the Corporation. Included in the extended purpose and objects granted by the Supplementary Letters Patent are the following objects:

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

(j) To become an accredited employer's organization under the Labour Relations Act of Ontario and to regulate relations between employers and employees in the plumbing and mechanical trades, and to represent such employers in collective bargaining within any sector or sectors of the plumbing and mechanical trades in any geographical area or areas as defined under the said Labour Relations Act, or as determined by the Ontario 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.

4. The applicant filed evidence of representation on behalf of forty-four employers in these applications. The applicant also filed a duly completed Form 62, Declaration Concerning Representation Documents, in each case. The Board is satisfied that the applicant represents these forty-four employers on whose behalf the evidence of representation was filed and that these employers on whose behalf such evidence was filed have given sufficient authority to the applicant to enable it to discharge its duties as an accredited employers' organization.

5. The applicant requested consolidation of these cases for the purpose of combining the sectors which were the subject matter of the separate applications. The applicant and the respondent are parties to a collective agreement in effect from May 1, 1971 to April 30, 1973, which is binding on more than one employer in the area and sectors that are the subject matter of this application. The evidence is that this collective agreement forms the basis for the jurisdiction of the Board in both sectors of the construction industry. In addition, there is sufficient evidence that the employers and employees affected by this application work in both sectors which the applicant is seeking to have combined. On the basis of the evidence before the Board and in the light of the filings by the individual employers in Form 68 with respect to the applications for each sector separately the Board is of the opinion that this is a case where the appropriate sector of the construction industry for collective bargaining is a combination of the industrial, commercial and institutional sector and the residential sector. The Board therefore finds that all plumbers, plumbers' apprentices, steamfitters, steamfitters' apprentices and welders for whom the respondent has bargaining rights in the Judicial District of Ottawa - Carleton and the United Counties of Prescott and Russell and the County of Lanark in the industrial, commercial and institutional sector and residential sector of the construction industry, constitutes a unit of employers appropriate for collective bargaining.

6. The Board sent notice of this application to sixty-seven employers. From this list of employers four employers failed to make filings and the applicant takes the position that these employers should be removed from the list of employers on the grounds that Band & Cole Limited and Band & Prime Mechanical were bankrupt, Berlin Plumbing & Heating Ltd. is out of

business and Welldun Mechanical Ottawa Incorporated is in fact a duplication of Well Dun Plumbing & Heating Limited. In addition to these employers there were ten other employers who failed to make filings although notified of this application. With respect to eight of these employers the applicant takes the position that they should be treated in the following manner:

Advance Plumbing & Heating will be placed on Final Schedule "E" and in the relevant payroll period the Schedule "H" for this employer will show one employee.

D.J. Byrne Plumbing & Heating will be placed on Final Schedule "E" and in the relevant payroll period the Schedule "H" for this employer will show two employees.

Connolly & Twizell (Eastern) Limited will be placed on Final Schedule "E" and in the relevant payroll period the Schedule "H" for this employer will show twenty employees.

Eisert Plumbing & Heating Co. Ltd. will be placed on Final Schedule "E" and in the relevant payroll period the Schedule "H" for this employer will show one employee.

Frechette Enterprises Reg'd will be placed on Final Schedule "E" and in the relevant payroll period the Schedule "H" for this employer will show one employee.

Hughes & Miller Plumbing & Heating Limited will be placed on Final Schedule "E" and in the relevant payroll period the Schedule "H" for this employer will show two employees.

Anderson McCarthy Plumbing & Heating will be placed on Final Schedule "E" and in the relevant payroll period the Schedule "H" for this employer will show two employees.

Standard Plumbing will be placed on Final Schedule "E" and in the relevant payroll period the Schedule "H" for this employer will show seven employees.

In the absence of any further representations from the respondent and having regard to the fact that the individual employers have received notice of this application, the Board proposes to accept the representations of the applicant with respect to these employers.

With respect to Anchor Mechanical Ltd. and W.A. Stephenson Construction Co. Ltd., these employers did not make any filings, and the applicant and the respondent made no further representations other than the original representation by the respondent that it held bargaining rights for these employers. Accordingly, the Board proposes to place these employers on Final Schedule "F".

7. The remaining employers on the list of employers have filed employer interventions in Form 68. The Board proposes to accept the representations of these employers as contained in their filings in Form 68. Thus, for instance, the Board will take as the correct name of the employer the name which the employer has set out in its Form 68. All of these employers but one agreed with the representations of the applicant and the respondent that the respondent is entitled to bargain on behalf of the Plumbers in their employ. One employer, Tec Contractors has in its Form 68 made representations to the Board that the respondent is not entitled to bargain on behalf of its employees. Neither the applicant nor the respondent has presented any evidence to the Board to refute this representation by that employer. Accordingly, the Board finds that Tec Contractors is not an employer in the unit of employers affected by this application.

8. On the basis of the materials filed with the Board by the applicant, the respondent and the individual employer interveners, the Board has compiled the following Final Schedule "E" of employers who have a collective bargaining relationship with the respondent and who have had employees within the year immediately preceding the making of this application.

A & D Plumbing & Heating
Advance Plumbing & Heating
Roger Alarie Plumbing & Heating
Raymond B. Albert Plumbing & Heating
(now Albert Mechanical Services Ltd.)
Andy's Mechanical Services Ltd.
Antagon Construction Ontario Ltd.
Black & McDonald Limited
Bill Boivin Plumbing & Heating Ltd.
Keith W. Bradley Plumbing & Heating Limited
Burke's Welding Limited
D.J. Byrne Plumbing & Heating
Calor Mechanical Limited
Canadian Mechanical Services Ltd.
Canadian Vickers Limited
Chatelaine & Tourangeau Ltd.
J.M. Carriere Plumbing & Heating

Raymond F. Clarke Limited
Clearview Plumbing & Heating Ltd.
Rene Cleroux Limited
Comstock International Ltd.
Connolly & Twizell (Eastern) Limited
P.J. Dunn Plumbing & Heating
Eisert Plumbing & Heating Co. Ltd.
G.E. Evoy & Son
F.C.B. Industries Ltd.
Fish and Pare Mechanical Contractors
Flange Plumbing & Heating Limited
E.S. Fox Limited
H.G. Francis & Sons Limited
Fraser-Brace Engineering Co. Ltd.
(Commercial Division)
Frechette Enterprises Reg'd
Fred Welding No. 1 (now Fred Welding Inc.)
General Plumbing & Heating (Ottawa) Limited
J.D. Gervin & Sons Ltd.
Hughes & Miller Plumbing & Heating Limited
Inter-Cities Plumbing Ltd.
Kenard Plumbing Limited
Lemay Plumbing & Heating Limited
J. Lewin & Co. Inc.
Loucks Plumbing & Heating
Anderson McCarthy Plumbing & Heating
Chas. McKinley Company
A.C. Malone
Paul Menard Mechanical Ltd.
Dalton Miller Plg. & Htg. Ltd.
Modern Mechanical Co. Limited
Ottawa Mechanical Services Limited
Ottawa Plumbing & Heating (1970) Ltd.
Thomas A. Pegg Plumbing & Heating Limited
Roberts Mechanical Service
J.G. Rivard Ltd. Plumbing & Heating
B.R. Rousseau Plumbing and Heating Ltd.
Sayers & Associates
J.R. Seguin & Fils Limited
Standard Plumbing
R.H. Waters Plbg. & Htg. Ltd.
Well Dun Plumbing & Heating Limited
Williams Plumbing & Heating Ltd.
Winer & Chazonoff (Ontario) Limited

The Board has also compiled a Final Schedule "F" which lists those employers who have a collective bargaining relationship with the respondent, but who have not had employees in the year immediately preceding the making of this application:

Anchor Mechanical Ltd.
E.J. Lachance & Son
W.A. Stephenson Construction Co. Ltd.

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

9. As noted above the applicant has filed evidence of representation with respect to forty-four employers. 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 forty-two of the employers ascertained as the number of employers under section 115(1)(a) of the Act. The forty-two 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 of the employers in the unit of employers are represented by the applicant employers' organization.

10. The entitlement of an employers' association to accreditation is based on a "double majority". We have now dealt with the first of 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 employed a majority of the employees affected by the application. On the basis of the filings by individual employers in Schedule "H" accompanying the employer intervention the Board finds that in the weekly payroll period immediately preceding February 18, 1972, the employers found by the Board to be employers within the meaning of section 115(1)(a) of the Act employed a total of five hundred and ninety one employees. The Board is of the opinion that the weekly payroll period immediately preceding February 18, 1972, is a satisfactory payroll period for the purposes of making the determination required in section 115(1)(c). Accordingly the Board finds that there were five hundred and ninety-one employees affected by the application. The five hundred and ninety-one employees is the number of employees to be ascertained by the Board under section 115(1)(c) of the Act.

11. The Board further finds that the forty-two employers represented by the applicant employers' organization employed a total of four hundred and eighty-eight employees during that weekly payroll period. 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.

12. 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 5 and in accordance with the provisions of section 115(2) of the Act for

such other employers for whose employees the respondent may after February 18, 1972, obtain bargaining rights through certification or voluntary recognition in the geographic area and sectors set out in the appropriate unit of employers.

February 22, 1973

"D. E. Franks"
for the Board