

ONTARIO LABOUR RELATIONS BOARD

Between: Mechanical Contractors Association Niagara,

Applicant,

- and -

The United Association of Journeymen and
Apprentices of the Plumbing and Pipefitting
Industry of the United States and Canada,
Local Union 666,

Respondent,

- and -

Housing and Urban Development Association of
Niagara,

Intervener.

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

APPEARANCES AT THE HEARING: W. S. Cook, W. C. McKay and
L. Wickett for the applicant; no one appeared for the
respondent; Peter Stevens for the intervener.

DECISION OF THE BOARD:

1. The applicant and the respondent are parties to a collective agreement dated June 10, 1971 in force until April 30, 1973. This agreement is binding on more than one employer in the geographic area and sectors of the construction industry which are the subject matter of this application. The Board therefore finds that it has the jurisdiction under section 113 of the Act to entertain this application for accreditation.
2. At the hearing in this matter, the applicant produced and identified through a witness, the constitution of the Mechanical Contractors Association Niagara. This constitution was ratified by a group of contractors who formed the association on September 29, 1971. The constitution of the Association provides that the objects of the Association set out in Article 3 include:

- (c) to represent 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;
- (1) to become an accredited employers' organization under The Labour Relations Act, as amended from time to time, or any legislation substituted therefor and to regulate relations between employers and employees in the construction industry, and represent such employers in collective bargaining within any sector or sectors in any geographical area or areas as defined under The Labour Relations Act or as determined by The Labour Relations Board.

The constitution of the Association also includes the following Article 14:

The Association, may, in its own name or in the name of any body or group to which authority has been properly delegated, make application for accreditation within any sector or sectors in any geographical area or areas as defined under The Labour Relations Act or as determined by the Labour Relations Board, and each of the members of the Association who are affected shall be deemed to have authorized such application or applications on its behalf.

The Board is satisfied that the applicant employers' organization is an employers' organization within the meaning of section 1(1)(h) and 106(d) of The Labour Relations Act and that it is a properly constituted organization for the purposes of section 115(3) of the Act.

3. The applicant filed with its application twenty three (23) documents entitled "Employer Authorization". These documents appoint the Mechanical Contractors Association Niagara to represent the named employer as bargaining agent in regard to the employees covered by the collective agreement with the respondent trade union. The scope of the appointment is limited to "Lincoln and Welland counties and that part of Haldimand west to Cayuga" and in the "Commercial, Industrial, Institutional and Residential" sectors. The documents are all signed on behalf of the individual employers named therein. The applicant also filed a duly completed Form 62, Declaration Concerning Representation Documents. 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 twenty-three employees. The Board is further satisfied that those employers who are represented by the

applicant have vested sufficient authority in the applicant to enable it to discharge the responsibilities of an accredited employers' organization on their behalf.

4. The applicant has requested accreditation for the following unit of employers:

All employers of plumbers and plumbers' apprentices, steamfitters and steamfitters' apprentices and welders for whom the respondent has bargaining right being within the boundaries of Lincoln and Welland Counties and that part of Haldimand County west to Cayuga in the commercial, industrial and institutional sector and the residential sector.

The geographic area set out in the proposed unit of employers is that set out in the collective agreement between the applicant and the respondent referred to in paragraph one supra. It was pointed out to the applicant that there is in existence an accreditation order with respect to the Mechanical Contractors Association Hamilton and Local Union 67 of the United Association of Journeymen and Apprentices to the Plumbing and Pipe Fitting Industry of the United States and Canada, a sister local of the respondent herein located in Hamilton. (Board File No. 1189-71-R, reported in (1972) O.L.R.B. Rep. p.923). That accreditation order extends into Haldimand County and the question was raised as to the effect of that existing geographic area which covers part of the County of Haldimand, on the present application. The applicant made no further representations to the Board on this matter. The Board is of the opinion that the geographic areas affected by adjacent applications for accreditation affecting the same trade should, if possible, have the same boundary line separating the two areas. The present case involves a collective agreement which overlaps the geographic area for which the Mechanical Contractors Hamilton have already been accredited. Rather than disturb the area in the existing accreditation order, which was based on the collective agreement filed in that case, the Board proposes to use the same boundary as set out in that order. In paragraph 22 of the Board's decision dated November 2, 1972, in Board File No. 1189-71-R, the eastern boundary of the geographic area of the appropriate unit of employers was described as "..... 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 when it meets the Wentworth County Line then to Lake Ontario" The line between the

Townships of South Cayuga and Dunn separates four Townships from the remainder of Haldimand County. In the present application, the Board is of the opinion that the proper description of that portion of Haldimand County affected by the application is "the Townships of Dunn, Canborough, Sherbrooke and Moulton in the County of Haldimand". The Board also notes, that although the collective agreement between the applicant and the respondent refers to the Counties of Lincoln and Welland, these Counties now form part of the Regional Municipality of Niagara, and will be referred to by the Board in that manner. Accordingly, the Board finds that the area of the Regional Municipality of Niagara and the Townships of Dunn, Canborough, Sherbrooke and Moulton in the County of Haldimand constitutes the appropriate geographic area for collective bargaining in the present case.

5. The applicant has applied for accreditation with respect to two sectors of the construction industry as defined in section 106(e) of the Act, namely the industrial, commercial and institutional sector and the residential sector. The applicant submits that the collective agreement upon which this application is based is applied in both these sectors and further that a substantial amount of both housebuilding and apartment building is performed in accordance with that agreement by members of the applicant. The intervener requests that the Board keep the residential sector of the industry separate from the Industrial, Commercial and Institutional sector. The basis of this request is that residential construction should be characterized as a consumer item, which is paid for in after tax dollars. We are of the opinion that such a consideration is not relevant in determining whether or not the Board should combine sectors for collective bargaining, particularly where the sectors are currently dealt with in one bargaining pattern. Accordingly, the Board further finds that the industrial, commercial and institutional sector and the residential sector are the appropriate sectors of the construction industry for collective bargaining in the present case.

6. In view of the above finds, the Board further finds that all employers of plumbers, plumbers' apprentices, steamfitters, steamfitters' apprentices and welders for whom the respondent has bargaining rights in the Regional Municipality of Niagara and the Townships of Dunn, Canborough, Sherbrooke and Moulton in the County of Haldimand in the industrial, commercial and institutional and the residential sectors of the construction industry constitute the unit of employers appropriate for collective bargaining.

7. As a result of filings by the applicant and respondent the Examiner previously appointed by the Board drew up a list of thirty-nine (39) employers who might be affected by this application. Notice of this application and of the hearing in Form 67 was served on each of these employers by the Registrar in accordance with the Board's Rules of Procedure. A number of employers who have made filings have indicated that the proper name of the employer making the filing is different from that on the original list of employers. The Board proposes to use the name of the employer as set out in the employer's filing in Form 68.

8. A number of the employers served with notice of the application have made no filing in Form 68. In such situations, the Board has taken the view that such employers ignore these proceedings at their own peril, and the Board will deal with these employers on the basis of the materials before it and on the representations of the parties. However, since the respondent was not present at the hearing and in some instances the applicant had no knowledge of the affairs of the employer, the Board has no representations as to how these employers should be dealt with. Accordingly, where the Board has no representation concerning an employer, the employer will be removed from the list of employers affected by the application. The employers who failed to make a filing have been dealt with in the following way:

E. S. Fox Limited - this employer is bound by a collective agreement with the respondent and during the week preceding February 5, 1973 had 75 employees affected by this application.

Foster Plumbing - this employer is removed from the list of employers since he has been out of business for some time.

F. N. Fulop Plg. & Htg. Ltd. - this employer is bound by a collective agreement with the respondent and during the week preceding February 5, 1973 had 5 employees affected by this application.

Mechanical Contracting Trades Limited - this employer is bound by a collective agreement with the respondent and during the week preceding February 5, 1973 had 4 employees affected by this application.

Ralph Mills - no representations, removed from list of employers.

Regional Plumbing & Heating - no representations, removed from list of employers.

9. Some employers who made filings in Form 68 indicated in those filings that they should be removed from the list of employers. The applicant agreed that two such employers should be removed from the list of employers, namely:

Honeywell Controls Limited
Johnson Controls Limited.

With respect to the other employers whose filings indicate they are not in the unit of employers, in the absence of any evidence to contradict these filings, the Board proposes to accept them. Thus, the following employers are removed from the list of employers affected by the application:

American Air Filter of Canada Limited - because it is not a company in the construction industry.

O. K. Plumbing and Heating Limited - because the respondent is not entitled to bargain on behalf of its employees.

Jack Sheldon Plumbing & Heating Limited - because the respondent is not entitled to bargain on behalf of its employees.

Gordon Wright Electric Limited - because the respondent is not entitled to bargain on behalf of its employees.

10. The Board accepts the representations of the remaining employers who have made filings and as a result of those filings, three employers have been placed on Final Schedule F because they have not had employees in the year preceding the making of the application. These employers on Schedule F are:

Bennet & Wright (Eastern) Limited
Home Plumbing
Kurt's Plumbing & Heating

The remaining employers all fall into Final Schedule E, that is, they have had employees during the year preceding the making of the application. Final Schedule E is as follows:

A. F. Pullen
Adam Clark Company Limited
Beamer & Lathrop (Quebec) Limited
Blenkhorn and Sawle Limited
Comstock International Ltd.
D. W. Ferguson & Company Ltd.
Danvi Mechanical Contractors Ltd.
E. S. Fox Limited
F. N. Fulop Plg. & Htg. Ltd.
G. & F Plumbing & Heating

Garden City Plumbing & Heating Co. :td.
George Smith
Goodram Bros. Ltd.
Janzen Plumbing & Heating Ltd.
John Peart & Son Limited
Lincoln Mechanical Contractors of Lincoln
Plumbing & Heating Ltd.
Mazur Plumbing & Heating Limited
Mechanical Contracting Trades Limited
Nesbitt Metal Fabricators Limited
R. Merville Plumbing & Heating
Reliance Plumbing & Heating Company Limited
Sheehan Plumbing & Heating Ltd.
Stamford Plumbing & Heating Co. Limited
St. Catharines Heating & Plumbing
Supreme Mechanical Contractors Ltd.-
W. B. Pyle Ltd.
Wm. Dennis Plumbing & Heating Limited.

The Board finds that the twenty-seven (27) employers on the final Schedule "E" were those employers who had employees in the year immediately preceding the making of the application and the number twenty-seven (27) is the number of employers to be ascertained by the Board under section 115(1)(a) of the Act.

11. 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 twenty-one (21) of the twenty-seven (27) employers on Final Schedule "E". The twenty-one (21) employers is the number of employers to be ascertained by the Board under section 115(1)(b) of the Act. Accordingly, the Board is satisfied that a majority of the employers in the unit of employers are represented by the applicant.

12. The Schedule "H" which accompanied the Form 68, Employer Intervention, filed by the individual employers set out the number of employees that the employer intervener has at each job site with details of the location and the type of construction involved. By section 115(1)(c) of the Act, the payroll period immediately preceding the making of the application is the relevant weekly payroll period for determining the number of employees affected by the application. The Board is satisfied that the weekly payroll period immediately preceding February 5, 1973, is a satisfactory payroll period for the determination in section 115(1)(c) of the Act. On the basis of all the evidence before us and in accordance with the foregoing considerations the Board finds that there were two hundred and two (202) employees affected by the application during the payroll period immediately preceding February 5, 1973. The two hundred and two (202) employees is the number of employees to be ascertained by the Board under section 115(1)(c) of the Act.

13. The Board further finds that the twenty-one (21) employers represented by the applicant employed one hundred and ninety eight (198) of these two hundred and two (202) employees. The Board is therefore satisfied that the majority of employers represented by the applicant employed a majority of the employees affected by the application as ascertained in accordance with the provisions of section 115(1)(c) of the Act.

14. Having regard to all of the above findings a Certificate of Accreditation will issue to the applicant for the unit of employers found to be an appropriate unit of employers in paragraph 6 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 5, 1973, obtain bargaining rights through certification or voluntary recognition in the geographic area and sectors set out in the unit of employers.

September 18, 1973.

"D. E. Franks"
for the Board