

ONTARIO LABOUR RELATIONS BOARD

Between:

The Roofing Division of the Toronto Sheet  
Metal and Air Handling Group,

Applicant,

- and -

The Built-Up Roofers' Damp and Waterproofers'  
Section of the Sheet Metal Workers'  
International Association Local Union #30,

Respondent,

- and -

Electrical Power Systems Construction  
Association,

Intervener.

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

APPEARANCES AT THE HEARING: W.S. Cook and L. Cianfarani  
for the applicant; William Munro for the respondent;  
H.A. Beresford for the intervener.

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. The applicant and the respondent are parties to a collective agreement in effect from May 1, 1971 to April 30, 1973. Negotiations are being held for renewal of this collective agreement. This agreement affects more than one employer in the geographic area and sector which are the subject matter of this application and the Board therefore finds that it has the jurisdiction under section 113 of the Act to entertain this application.

2. The applicant in the present case is a Corporation. In support of its application the applicant filed copies of Letters Patent and Supplementary Letters Patent. The Letters Patent are dated October 17, 1967, and create a Corporation without share capital. With Supplementary Letters Patent dated November 9, 1971, granted by the Minister of Financial and Commercial

Affairs the objects were varied and included in Article 2(h):

"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 sheet metal trade and all ancillary and allied trades and to 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."

3. The applicant also filed By-Law No. 2 dated October 25, 1972 and By-Law No. 3 dated September 15, 1971. These were identified at the hearing by the applicant and listed as Exhibits No. 2 and 3. The status of the applicant was not questioned by the respondent or any one appearing at the hearing and accordingly the Board finds that the applicant is an employers' organization within the meaning of section 106(d) of the Act and further that it is a properly constituted organization for the purposes of section 115(3).

4. In support of its application the applicant filed evidence of representation on behalf of twelve (12) employers. The evidence of representation is in the form of a power of attorney appointing The Roofing Division of the Toronto Sheet Metal and Air Handling Group as agent and representative for collective bargaining with the respondent union. The applicant also filed a duly completed Form 62, Declaration Concerning Representation Documents, in support of the evidence of representation submitted by it. The Board is satisfied that the evidence of representation meets the requirements set out in section 96 of the Board's Rules of Procedure. The Board is therefore satisfied that the individual employer on behalf of whom the applicant has submitted evidence of membership has vested appropriate authority in the applicant to enable it to discharge the responsibilities of an accredited bargaining agent.

5. The unit of employers requested by the applicant at the time of making the application consisted of the industrial, commercial and institutional, sewers, tunnels and watermain, roads, heavy engineering, pipeline, electrical power systems sectors. The Electrical Power Systems Construction Association filed an intervention (Form 65) together with its Constitution and By-Law No. 1

opposing the inclusion of the electrical power systems sector. However, at the hearing it was agreed by the applicant and the respondent that the appropriate sector should be limited to the industrial, commercial and institutional sector of the construction industry. Subsequently the intervener withdrew from the proceedings. Having considered the representations of the parties, the Board finds that all employers of roofers and roofers' labourers for whom the respondent has bargaining rights in Halton County with the exception of the west side of Oakville Creek in Trafalgar Township; Nelson and Nassawageya Townships; Peel County; Erin Township in Wellington County; Dufferin County; Simcoe County; Metropolitan Toronto; York County; County Ontario; the Townships of Cartwright and Darlington in Durham County; District of Muskoka and the Townships of Carling, Ferguson, McDougall, McKellar, Christie, Foly, Conger and Humphries in the District of Parry Sound in the Province of Ontario in the industrial, commercial and institutional sectors of the construction industry, constitute a unit of employers appropriate for collective bargaining.

6. Notice of the application was given to twenty-four (24) employers in accordance with the Board's Rules of Procedure. There were seven (7) employers who failed to make the proper filings in Form 68 and Schedule "H". Since these employers were notified of the application and they refused to make the appropriate filings, the Board proposes to accept the agreement of the parties concerning the disposition of these employers for the purposes of section 115 of the Act. Accordingly,

Employer No. 7 - Derry Brothers -  
is an employer in the unit of employers who had no employees in the payroll period immediately preceding May 25, 1973 and should be placed on Final Schedule "F".

Employer No. 10 - Feather & Roadhouse -  
is an employer in the unit of employers who had no employees in the payroll period immediately preceding May 25, 1973 and should be placed on Final Schedule "F".

Employer No. 11 - A.E. Furnival & Co. Ltd. -  
is an employer in the unit of employers who had forty (40) employees in the payroll period immediately preceding May 25, 1973 and should be placed on Final Schedule "E".

Employer No. 17 - Peerless Enterprises -  
is an employer in the unit of employers who had forty (40) employees in the payroll period immediately preceding May 25, 1973, and should be placed on Final Schedule "E".

Employer No. 18 - Plewman Roofing Co. - is an employer in the unit of employers who had no employees in the payroll period immediately preceding May 25, 1973 and should be placed on Final Schedule "F".

Employer No. 21 - Seeback & Sons Ltd. is an employer in the unit of employers who had forty (40) employees in the payroll period immediately preceding May 25, 1973 and should be placed on Final Schedule "E".

Employer No. 23 - Williams Roofing & Sheet Metal - is an employer in the unit of employers who had five (5) employees in the payroll period immediately preceding May 25, 1973 and should be placed on Final Schedule "E".

7. At the hearing the applicant and the respondent agreed that Employer No. 24 - Hydro-Electric Power Commission of Ontario should be removed from the list of employers in the unit of employers because the respondent was not entitled to bargain on behalf of its employees in the bargaining unit set out in paragraph 5 supra. The parties challenged the filing made by Employer No. 2 - Beavis Brothers Ltd., who made a filing on the Form 68 claiming that the respondent is not entitled to bargain on behalf of any of his employees, but listed seven (7) employees on Schedule "H" as being employees in his employ affected by the application. The Board has before it evidence filed by the applicant in the form of Employer Authorization, whereby Beavis Brothers Ltd. vested in the applicant the power to bargain on behalf of its employees and is therefore covered by the collective agreement with the respondent existing at the time of making the application. Thus, Beavis Brothers Ltd. will be placed on Final Schedule "E" and the seven (7) employees listed on Schedule "H" will be accepted as the number of employees in the payroll period immediately preceding May 25, 1973.

8. The Board accepts the representations of the remaining employers who have made filings and as a result of those filings and on the basis of the foregoing considerations the Board has drawn up the following lists of employers. Those employers listed on Final Schedule "E" are those who had employees affected by the application in the year preceding May 25, 1973, 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"

Bothwell - Accurate Ltd.  
Beavis Brothers Ltd.  
Canadian Rogers (Eastern) Ltd.  
James C. Chandler Co.  
Dean & Chandler Co.  
Dufferin Roofing Ltd.  
Eady Bros. & Co. Ltd.  
A.E. Furnival & Co. Ltd.  
N. Harrington Roofing & Sheet Metal  
Heather Little Limited  
G.R. LeBarne & Company Limited  
Nartco Roofing & Sheet Metal Ltd.  
York Roofing Ltd.  
Peerless Enterprises  
Pollard Roofing Limited  
Relco Roofing Company Limited  
Seeback & Sons Ltd.  
Semple - Gooder & Co. Ltd.  
Williams Roofing & Sheet Metal

FINAL SCHEDULE "F"

J. Dennis & Co. Ltd.  
Derry Brothers  
Feather & Roadhouse  
Plewman Roofing Co.

The Board finds that the nineteen (19) employers on Final Schedule "E" are those employers who had employees in the year immediately preceding the making of the application, and the number nineteen (19) is the number of employers to be ascertained by the Board under section 115(1)(a) of the Act.

9. 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 twelve (12) of the nineteen (19) employers on Final Schedule "E". The twelve (12) 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.

10. 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 determine whether those employers employed a majority of the employees affected by this application. The Schedule "H" which accompanied the Form 68, Employer Filing, filed by the

individual employers sets out the number of employees that the employer has at each job site with details of the location and type of construction involved. By section 115(1)(c) of the Act the relevant payroll period is the weekly payroll period immediately preceding May 25, 1973. The Board is satisfied that such a payroll period is the satisfactory payroll period for the determination in section 115(1)(c) of the Act.

11. On the basis of all the evidence before it and in accordance with the foregoing considerations the Board finds that there were four hundred and eleven (411) employees affected by the application during the weekly payroll period immediately preceding May 25, 1973. The four hundred and eleven (411) employees is the number of employees to be ascertained by the Board under section 115(1)(c) of the Act.

12. The Board further finds that the twelve (12) employers within the unit represented by the applicant employed two hundred and sixty-three (263) 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.

13. 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 5 supra, and in accordance with the provisions of section 115(2) of the Act for such other employers for whose employees the respondent may after May 25, 1973, obtain bargaining rights through certification or voluntary recognition in the geographic area and sectors set out in the unit of employers.

March 26, 1974

"D. E. Franks"  
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for the Board