

ONTARIO LABOUR RELATIONS BOARD

Between:

Windsor Sheet Metal Contractors
Association,

Applicant,

- and -

Sheet Metal Workers International
Association Union Local 235,
Windsor Branch,

Respondent.

BEFORE: R. A. Furness, Vice-Chairman, and Board Members
H. J. F. Ade and E. Boyer.

APPEARANCES AT THE HEARING: W. S. Cook, E. Rosenbaum and
R. Dufty appearing for the applicant and Ronald S. Taylor
appearing for the respondent.

DECISION OF THE BOARD:

1. This is an application for accreditation, construction industry wherein the applicant seeks to be accredited as the bargaining agent for certain employers who have a bargaining relationship with the respondent. The respondent is a party to a collective agreement with the applicant dated June 15, 1973 which is effective from May 1, 1973, until April 30, 1975. Having regard to the material before it, the Board is satisfied that more than one employer which is affected by this application is bound by this collective agreement. Accordingly, the Board finds that it has jurisdiction to entertain this application under section 113 of The Labour Relations Act.

2. The applicant is a corporation. In support of its application the applicant filed a copy of its Letters Patent dated March 23, 1970, given under the hand and seal of office of the Minister of Financial and Commercial Affairs for the Province of Ontario. These Letters Patent create the Windsor Sheet Metal Contractors Association a corporation without share capital. The applicant also filed a copy of its Supplementary Letters Patent dated June 24, 1974, given under the hand and seal of office of the Minister of Consumer and Commercial Relations. In addition the applicant filed a copy of its general By-Laws.

Having regard to the material before it and to the representations of the parties, the Board finds that the applicant is an employers' organization within the meaning of section 106(d) of The Labour Relations Act and is satisfied that the applicant is a properly constituted organization for the purposes of section 115(3) of The Labour Relations Act.

3. The applicant also filed in support of its application 15 documents entitled "Employer Authorizations". These documents appoint the applicant as representative for collective bargaining with the respondent and also appoint the applicant as agent and representative to make an application for accreditation under The Labour Relations Act. The applicant also filed in support of these documents a duly completed Form 62, Declaration Concerning Representation Documents, Application for Accreditation, Construction Industry. 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 rested appropriate authority in the applicant to enable it to discharge the responsibilities of an accredited bargaining agent.

4. The collective agreement referred to in paragraph one herein applies to and is effective within the City of Windsor and the County of Essex. The applicant and the respondent agree that the appropriate geographic area for accreditation in the instant application is the County of Essex with a clarity note to make it clear that the City of Windsor is included in the geographic area. The applicant and the respondent have also agreed that pursuant to this collective agreement employees have been employed in the industrial, commercial and institutional sector of the construction industry. In all of the circumstances of this application the Board finds that all employers of journeymen sheet metal workers and registered apprentices for whom the respondent has bargaining rights in the County of Essex in the industrial, commercial and institutional sector of the construction industry, constitute a unit of employers appropriate for collective bargaining. For the purpose of clarity the Board declares that the City of Windsor is included within the County of Essex.

5. Notice of this application was given to 28 employers in accordance with the Board's Rules of Procedure. At the hearing in this matter the applicant and the respondent agreed that the following employers should be removed from the list of employers in the unit

of employers because the respondent was not entitled to bargain on behalf of their employees in the geographic area and sector in a unit of employers:

- No. 7 Cunningham Sheet Metal (Windsor) Inc.
- No. 13 Hercon Sheet Metal
- No. 16 Industrial Metal Fabricators Limited
- No. 28 Windsor Furnace Ltd.

6. A number of employers have failed to file returns. In these circumstances the applicant and the respondent have agreed that the disposition of these employers for the purposes of section 115 of The Labour Relations Act is as follows:

- No. 9 Fraser-Vien Ltd. - Final Schedule "F"
- No. 11 Globe Sheet Metal Co. Ltd. Final Schedule "F"
- No. 15 Ideal Heating & Cooling- Final Schedule "F"
- No. 21 McAvoy Plumbing & Heating Co. - Final Schedule "E"
- No. 22 Riverside Construction - Final Schedule "F"

7. The three employers who claimed to be excluded from the list of employers in the unit of employers in their employer filing did not appear at the hearing in this matter. Two of these employers have already been removed from the list of employers in paragraph five herein (No. 6 and No. 13). The Board finds that the third employer, having regard to the representations of the parties, has bargaining rights with the respondent. Accordingly, this employer will be dealt with as follows:

- Bennett & Wright Contractors Ltd. - Final Schedule "F"

8. On the basis of the foregoing and the filings by individual employers, the Board has prepared 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 October 23, 1974, 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"

- Atlas Heating and Air Conditioning Limited
- Bannon Sheet Metal Limited
- Burnet Mechanical Systems Limited

Cunningham Sheet Metal Works Ltd.
Dayus Roofing Limited
Fahrhall Mechanical Contractors Limited
Harold's Heating Company Limited
Holek-Vollmer Corporation Ltd.
J. E. Murphy Sheet Metal Co. Ltd.
Mac J. Brian Mechanical Limited
Matthews Roofing Company
McAvoy Plumbing & Heating Co.
Riverside Sheet Metal Limited
Robertson Building Systems Limited
Spada Sheet Metal Limited
Westeel-Rosco Limited

Final Schedule "F"

Beaver Engineering Ltd.
Bennett & Wright Contractors Ltd.
Fraser-Vien Ltd.
Globe Sheet Metal Co. Ltd.
Ideal Heating & Cooling
J. T. Swinton Ltd.
Riverside Construction
Schreiber Brothers Limited

The Board finds that the 16 employers on Final Schedule "E" were those employers who had employees in the year immediately preceding the making of the application, and the number 16 is the number of employers to be ascertained by the Board under section 115(1)(a) of The Labour Relations Act.

9. On the basis of all the evidence before it, the Board finds that on the date of the making of the application the applicant represented 10 of the 16 employers on Final Schedule "E". The 10 employers is the number of employers to be ascertained by the Board under section 115(1)(b) of The Labour Relations Act. Accordingly, the Board is satisfied that a majority of the employers in the unit of employers is represented by the applicant.

10. 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 the type of construction involved. By section 115(1)(c) of The Labour Relations 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.

11. The Employer Filing further provides that an employer can claim that this payroll period is not the relevant period for the purposes of this application. A number of employers in this application made such a representation to the Board in their filings. Having regard to the representations before it, the Board proposes to use the payroll period immediately preceding the making of this application for:

No. 20 Matthews Roofing Company

No. 27 Westeel-Rosco Limited

For the remaining employers the Board is satisfied that the weekly payroll period immediately preceding October 23, 1974, is also a satisfactory payroll period for the determination in section 115(1)(c) of The Labour Relations Act. On the basis of all the evidence before it, and in accordance with the foregoing considerations, the Board finds that there were 118 employees affected by this application during the payroll period immediately preceding October 23, 1974. The 118 employees is the number of employees to be ascertained by the Board under section 115(1)(c) of The Labour Relations Act.

12. The Board further finds that the 10 employers represented by the applicant employed 86 of these 118 employees. The Board is therefore satisfied that the majority of the employers represented by the applicant employed a majority of the employees affected by this application as ascertained in accordance with the provisions of section 115(1)(c) of The Labour Relations 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 four herein, and in accordance with the provisions of section 115(2) of The Labour Relations Act for such other employers for whose employees the respondent may after October 23, 1974, obtain bargaining rights through certification or voluntary recognition in the geographic area and sector set out in the unit of employers.

"R. A. Furness"
for the Board

May 7, 1975.