



ONTARIO LABOUR RELATIONS BOARD

OLRB Case No: **0360-21-R**

Greater Toronto Sewer and Watermain Contractors Association,
Applicant v Labourers' International Union of North America, Local 183,
Responding Party v The Oshawa Area Signatory Contractors Association,
Intervenor

BEFORE: Jack J. Slaughter, Vice-Chair

DECISION OF THE BOARD: May 5, 2022

1. This is an application for accreditation made pursuant to section 134 of the *Labour Relations Act, 1995*, S.O. 1995, c.1, as amended (the "Act") in which the applicant seeks to be accredited as the bargaining agent of sewers and watermains employers of construction labourers in a manner that expands the geographic scope of its existing accreditation certification with the Labourers' International Union of North America, Local 183 ("Local 183" or the "Union").
2. The Board finds that the applicant is an employers' organization within the meaning of sections 1(1) and 126 of the Act, and meets the requirement to be accredited as a properly constituted employers' organization under subsection 136(3) of the Act. The Board further finds that the responding party is a trade union within the meaning of sections 1(1) and 126 of the Act.
3. Section 135 of the Act requires the Board, upon an application for accreditation, to determine "the unit of employers that is appropriate for collective bargaining in a particular geographic area and sector...". Section 135 also provides that the Board, in making that determination, "need not confine the unit to one geographic area or sector but may, if it considers it advisable, combine areas or sectors or both or parts thereof."

4. In a decision dated January 14, 2022, the Board directed the applicant to provide notice to all the employers the responding party had listed on Schedule "E" to its response and to any other employers the applicant believed may be affected by this application. The Board did not require the responding party to file a Schedule "F" as neither the Act nor the Board's Rules of Procedure any longer require the service and filing of a Schedule "F" in an accreditation application. In addition, the parties further agreed that the notice (along with a copy of the application, response and all Board decisions) would be made accessible on the Board's website. The Board further directed that a copy of the notice would be included as an advertisement in four publications utilized by contractors engaged in sewers and watermains work that service the affected geographic areas.

5. The applicant has confirmed that it placed the notices as directed by the Board.

6. Having regard to the foregoing, the Board is satisfied that the applicant has met its obligation to provide reasonable notice to any person or employer that may be affected by this proceeding.

7. In the January 14, 2022 decision, the Board set an Employer Filing Date of February 28, 2022, by which time any affected employer wishing to participate in the application was required to serve and file specified materials, including a Form A-94, Employer Filing, Application for Accreditation Construction Industry along with the required Schedule "A" to the Form A-94. The Board received such materials from 25 employers by the Employer Filing Date. Only two employers objected to the application. All but two of the 25 employers indicated that the applicant was entitled to bargain on their behalf.

8. The two objecting employers are Coco Paving Inc. ("Coco") and Sewer Technologies Inc. ("Sewer Tech"). By decision dated March 9, 2022, the Board directed the parties to file submissions with respect to the objections of Coco and Sewer Tech.

9. Both the applicant and Local 183 filed detailed submissions dated March 25, 2022. Both Coco and Sewer Tech filed responsive submissions on April 8, 2022. Local 183 filed further unsolicited submissions on April 13, 2022.

10. The Board will deal with the position of Coco first. Then the Board will examine Sewer Tech's situation.

11. In its responsive submissions dated April 8, 2022, Coco takes no issue with any of the findings made by the Board to date. Coco does not seek an exclusion from the applicant's proposed bargaining unit. Coco simply makes it clear that its position is effectively a "no vote" and that it does not support this application.

12. Accordingly, the Board will do as Coco has requested and treat its submissions as a "no vote". However, Coco's objection is not numerically significant to the applicant's entitlement to accreditation in this matter.

13. Sewer Tech's objection, and the resolution of it, are not so simple. Sewer Tech does not challenge the bargaining unit description. Nor does Sewer Tech seek "a carve out of its collective agreement from the accreditation order". Rather Sewer Tech argues that Local 183 has not been certified or granted voluntary recognition or entered into a collective agreement with it. Sewer Tech relies on the language of section 134 of the Act, and that it is party to a different collective agreement with what it asserts is a different union, namely the Provincial Vacuum Truck Agreement (the "Vac Truck Agreement") with Labourers' International Union of North America, Ontario Provincial District Council (the "OPDC"). Therefore, Sewer Tech seeks a determination that any accreditation order issued by the Board in this matter would not apply to it. In the alternative, Sewer Tech also wishes to be treated as a "no vote".

14. Both Local 183 and the applicant oppose the exclusion of Sewer Tech from the bargaining unit. In support of its argument, the applicant relies on: sections 126, 134 and 146 of the Act; and the language of the Vac Truck Agreement. The applicant also challenges certain persons on Sewer Tech's list of employees.

15. For its part, Local 183 echoes the arguments of the applicant and adds three details: Sewer Tech employs members of Local 183 and applies the full terms and conditions of the applicant's collective agreement to them, including making the necessary remittances; Sewer Tech is attending negotiations for the renewal of the applicant's collective agreement; and the Board's decision in *Ontario Power Generation Inc.*, 2001 CanLII 14403 (ON LRB) (November 5, 2001).

16. The Board finds that the following provisions of the Act are relevant to its determination of the "Sewer Tech issue":

126. (1) In this section and in sections 126.1 to 168,

“council of trade unions” means a council that is formed for the purpose of representing or that according to established bargaining practice represents trade unions as defined in this section; (“conseil de syndicats”)

“employer” means a person other than a non-construction employer who operates a business in the construction industry, and for purposes of an application for accreditation means an employer other than a non-construction employer for whose employees a trade union or council of trade unions affected by the application has bargaining rights in a particular geographic area and sector or areas or sectors or parts thereof; (“employeur”)

...

126.1 (1) Sections 126 to 168 set out special provisions with respect to the construction industry.

...

(3) If there is a conflict with respect to the application of provisions of this Act with respect to the construction industry, it shall be resolved as follows:

1. A provision in sections 126 to 144 prevails over a provision in sections 7 to 63 and 68 to 125.
2. A provision in sections 146 to 150 prevails over any other provision of the Act.
3. A provision in sections 150.1 to 167 prevails over a provision in sections 7 to 63 and 68 to 144.

...

134. Where a trade union or council of trade unions has been certified or has been granted voluntary recognition under section 18 as the bargaining agent for a unit of employees of more than one employer in the construction industry or where a trade union or council of trade unions has entered into collective agreements with more than one employer covering a unit of employees in the construction industry, an employers’ organization may apply to the Board to be accredited as the bargaining agent for all employers in a particular sector of the industry and in the geographic area

described in the said certificates, voluntary recognition documents or collective agreements, as the case may be.

135. (1) Upon an application for accreditation, the Board shall determine the unit of employers that is appropriate for collective bargaining in a particular geographic area and sector, but the Board need not confine the unit to one geographic area or sector but may, if it considers it advisable, combine areas or sectors or both or parts thereof.

(2) The unit of employers shall comprise all employers as defined in section 126 in the geographic area and sector determined by the Board to be appropriate.

...

145. (1) In sections 146 to 150,

"constitution" means an organizational document governing the establishment or operation of a trade union and includes a charter and by-laws and rules made under a constitution; ("acte constitutif")

"jurisdiction" includes geographic, sectoral and work jurisdiction; ("jurisdiction")

"local trade union" means, in relation to a parent trade union, a trade union in Ontario that is affiliated with or subordinate or directly related to the parent trade union and includes a council of trade unions; ("syndicat local")

"parent trade union" means a provincial, national or international trade union which has at least one affiliated local trade union in Ontario that is subordinate or directly related to it. ("syndicat parent")

146. (1) This section applies with respect to employees in a bargaining unit in the construction industry other than in the industrial, commercial and institutional sector referred to in the definition of "sector" in section 126.

(2) If a parent trade union is the bargaining agent for employees described in subsection (1), each of its local trade unions is deemed to be bargaining agent, together with the parent trade union, for employees in the bargaining unit within the jurisdiction of the local trade union.

(3) If a parent trade union is a party to a collective agreement that applies to employees described in subsection (1), the local trade union is deemed to be a party, together with the parent trade union, to the collective agreement with respect to the jurisdiction of the local trade union.

17. The Board further finds that the following provisions of the Vac Truck Agreement are also relevant to its determination of the "Sewer Tech issue":

2.01 The Employer recognizes the Union as the sole and exclusive bargaining agent for all construction tradespersons, including construction labourers, teamsters, and operating engineers, in the employ of the Employer in all sectors of the Construction Industry, excluding the Industrial, commercial and institutional sector, in the Province of Ontario, save and except project managers, non-working foremen, and persons above the rank of non-working foremen.

Clarity Note: Without limitation, it is agreed that the term "construction tradesperson", as set out, above includes the following classifications: Boiler Tradesperson, Cutter Tradesperson, CCTV Tradesperson, Combo Tradesperson, Grout Tradesperson, Flusher Tradesperson, Spot Repair-Tradesperson, and Helper to any of the above classifications.

2.02 Notwithstanding that this Agreement is made solely between the Employer and Union, and that the bargaining rights are held exclusively by the Union and will not be transferred, each agrees with the other that each affiliated Local Union identified in Article 24 shall be the administrative party for this Agreement for work performed within the geographic area of such affiliated Local Union.

LETTER OF UNDERSTANDING NO. 4

Whenever an Employer carries out or contracts for the carrying out of work in Board Area No. 8 and/or Simcoe County, all the provisions of the Collective Agreement between the Universal Works Union, Local 183 and the Greater Toronto Sewer and Watermain Contractors Association ("GTSWCA"), will, without exception, govern and be applicable to this work.

Without limitation, the Employer will be obligated to cause industry funds to be remitted to the GTSWCA.

APPENDIX "C"

For all work falling within the scope of the Collective Agreement between the Universal Workers Union, LiUNA Local 183 and the Greater Toronto Sewer and Watermain Contractors Association ("GTSWCA Agreement"), the Employer shall comply with the full terms and conditions of the GTSWCA Agreement without exception and, without limiting the generality of the foregoing, shall ensure that industry funds are remitted in accordance with the GTSWCA Agreement. It is agreed that in no way does this provision create any bargaining rights for Teamsters local 230, nor could it.

18. Sewer Tech's argument is based upon a narrow interpretation of subsection 134. It is premised on the fact that Local 183 itself has not directly signed a voluntary recognition or a collective agreement with Sewer Tech, nor received a certificate from the Board to represent Sewer Tech's construction labourers.

19. With respect, Sewer Tech's argument does not reflect proper principles of statutory interpretation, nor accord with proper principles of construction industry collective agreement interpretation.

20. On the former, the Board has reference to the "modern rule of statutory interpretation", which stipulates that the "words of an Act are to be read in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act, and the intention of Parliament": *Re Rizzo & Rizzo Shoes Ltd.*, 1998 CanLII 837 (SCC), [1998] 1 S.C.R. 27; *Verdun v. Toronto-Dominion Bank*, [1996] 3 S.C.R. 550; *Friesen v. Canada*, 1993 CanLII 63 (SCC), [1993] 3 S.C.R. 103; *Vale Canada Limited*, [2015] OLRB Rep. March/April 411.

21. On the latter, the Board finds that what it said about construction industry collective agreement interpretation in *Bruce Power LP*, [2004] OLRB Rep. May/June 479 ("*Bruce 2004*") remains applicable. The reasoning therein was confirmed once again in two recent decisions: *Bruce Power LP*, 2020 CanLII 96012 (ON LRB) (November 30, 2020) ("*Bruce 2020*"); and *Toronto Residential Labour Bureau*, 2021 CanLII 56519 (ON LRB) (June 21, 2021) ("*TRLB*").

22. In *Bruce 2004, supra*, the Board stated the following:

14. The Board is thus required to analyze and interpret the language of the collective agreement. A collective agreement is a contract. As described in *Canadian Labour Arbitration Third Edition* (D.J. M. Brown and D. M. Beatty, Aurora: Canada Law Book, 2003) at p. 4-42, an arbitration tribunal's task in interpreting a collective agreement is no different than that faced by other adjudicators in applying statutes, private contracts and other authoritative directives. The general principle for interpreting contracts is that the tribunal should "search for an interpretation which, from the whole of the contract, would appear to promote or advance the true intent of the parties at the time of entry into the contract": *Consolidated-Bathurst Export Ltd. v. Mutual Boiler & Machinery Ins. Co.*, (1979), 1979 CanLII 10 (SCC), 112 D.L.R. (3d) 49 (S.C.C.) at p. 58; see also *Hillis Oil & Sales Ltd. v. Wynn's Canada Ltd.*, 1986 CanLII 44 (SCC), [1986] 1 S.C.R. 57. *Hamilton and District Sheet Metal Contractors Inc.*, [1981] OLRB Rep. June 672, *The Corporation of the City of Sault Ste. Marie*, [1994] OLRB Rep. April 496. The Contract should be construed as a whole, giving effect to all of its terms, so long as this does not result in an absurdity: *Holt v. Corporation of the City of Thunder Bay*, (2003) 2003 CanLII 38649 (ON CA), 65 O.R. (3d) 257 (C.A.) at p. 263. *Belleville Police Services Board* (2000), 2000 CanLII 29512 (ON LA), 91 L.A.C. (4th) 99 (Goodfellow). The contract must also be interpreted with a view to the labour relations considerations involved, and in particular, the practical realities of the construction industry: *Provincial International Cranes Inc.*, [1998] OLRB Rep. Nov./Dec. 1004.

23. Therefore, the Board must examine the relevant statutory provisions in the context of the entire Act, including its object and purpose; and also consider the relevant provisions of the Vac Truck Agreement, giving effect to all its terms and considering the practical realities of the construction industry.

24. Two of the purposes of the Act, set out at section 2 thereof, are "to facilitate collective bargaining between employers and trade unions that are the freely-designated representatives of the employees" and "to encourage co-operative participation of employers and trade unions in resolving workplace disputes".

25. Furthermore, the Act is remedial legislation and is to be liberally construed to achieve its purposes: *Imperial Tobacco Products (Ontario) Limited*, [1974] OLRB Rep. July 418; *J.G. Rivard Limited*, [1980] OLRB Rep. July 1009; *International Brotherhood of Electrical Workers*, [1996] OLRB Rep. September/October 826; *Regina v. Ontario Labour Relations Board ex parte Genaire Ltd.*, 1958 CanLII 130 (ON SC), [1958] OR. 637. As the Board stated in *Accu-Fax Investigations Inc.*, 2003 CanLII 31274 (ON LRB): “[s]tatutes intended to protect and enhance the rights of workers are to be given a large and liberal interpretation and exceptions to the entitlement provisions should be narrowly construed: *Re Abrahams and A.G. Canada* (1983), 1983 CanLII 17 (SCC), 142 DLR (3d) 1 (SCC); *Re Rizzo & Rizzo Shoes Ltd.*, 1998 CanLII 837 (SCC), [1998] 1 SCR 27; *Machtiger v. HOJ Industries Ltd.* (1991), 1992 CanLII 102 (SCC), 91 D.L.R. (4th) 491 (S.C.C.); *Inco Metals* [1980] OLRB Rep. July 1981”.

26. Turning more specifically to the accreditation provisions of the Act, the Board commented specifically on how they fit into the overall scheme of the Act in *Multiplex Construction Canada Limited*, 2018 CanLII 124212 (ON LRB) as follows: “The purposes of these provisions are well-known: they operate to create a “level playing field” for all employers participating in the industry and prevent “whipsawing” and other forms of bargaining that would undermine the stability of the industry”.

27. This is not a novel proposition, as explained in an earlier decision of this panel in this case in the following quotation from *Greater Toronto Sewer and Watermain Contractors Association*, 2022 CanLII 1663 (ON LRB):

21. The only remaining question is whether the bargaining relationship between the OASCA and Local 183 should be exempted from the GTSWCA’s bargaining unit. The Board finds that it should not. The whole point of an accreditation order is to create a “level playing field” in the industry and eliminate anomalies that can result from “whipsawing”, “leapfrogging” and other disruptive tactics. These types of construction industry labour relations problems are nothing new. They have been identified as problems requiring rectification as far back as in the *Report of The Royal Commission on Labour-Management Relations in the Construction Industry* which was released in March of 1962. It was authored by H. Carl Goldenberg, Q.C., who was appointed a Commissioner in June of 1961 to inquire into and report upon state of the construction industry in Ontario

at that time. The same policy concerns are identified in G.W. Adams, *Canadian Labour Law, supra*, at chapter 15 and *Platinum Drywall Ltd., 2002 CanLII 11754* (ON LRB) (December 5, 2002). It would be entirely inappropriate and antithetical to good labour relations to have two competing accredited collective agreements covering exactly the same work. Therefore, the Board will not permit the OASCA the exemption it is seeking.

28. Given these analytical principles, the Board turns to the specific facts and law applicable to the "Sewer Tech issue".

29. The fact that Local 183 does not have a certificate, voluntary recognition agreement or collective agreement with Sewer Tech where Local 183 is the named party is not determinative.

30. There is no dispute that Local 183 is a constituent local union of the OPDC. There is equally no contest that the OPDC has a collective agreement with Sewer Tech. With respect to Sewer Tech, there is no evidence before the Board that the OPDC is a "certified council of trade unions" as that term is defined in subsection 1(1) of the Act, which specifically defines both what is a "certified council of trade unions" and a "council of trade unions" as follows:

1. (1) In this Act,

"certified council of trade unions" means a council of trade unions that is certified under this Act as the bargaining agent for a bargaining unit of employees of an employer; ("conseil de syndicats accrédité")

"council of trade unions" includes an allied council, a trades council, a joint board and any other association of trade unions; ("conseil de syndicats")

31. As the OPDC had not been certified to represent Sewer Tech's construction labourers, it must be considered to be an uncertified council of trade unions. In the Board's view, the language of Article 2.02 of the Vac Truck Agreement does not change this reality, but rather defines which local union will be administering the Vac Truck Agreement in its local area. The Board has repeatedly held that an uncertified council of trade unions holds bargaining rights not in its own name, but as agent for the constituent members of the council: *The Board of Education for the City of Toronto*, [1982] OLRB Rep. Mar. 496; *Metropolitan Toronto Apartment Builders Association*, [1994] OLRB Rep. Nov. 1568, and

International Union of Operating Engineers, Local 793, [1979] OLRB Rep. Aug. 789.

32. Therefore, Local 183 has bargaining rights and a collective agreement with Sewer Tech through voluntary recognition. However, the Board also finds that there is another independent ground supporting a conclusion that Local 183 has a bargaining relationship with Sewer Tech which would bring Sewer Tech within the scope of the bargaining unit in this matter.

33. The second ground is the application of section 146 to the facts of this case. Through the operation of section 126.1(3) of the Act, section 146 prevails over subsection 134 to the extent there is any conflict between those two sections of the Act.

34. In *Ontario Power Generation, supra*, the Board gave a definitive interpretation of the effect of section 146 on bargaining rights as between a "parent trade union" (in this case the OPDC) and a "local trade union" (in this case Local 183) in the following excerpt:

33. Section 146 does not eliminate the fact that there is a province-wide bargaining for which the IUBAC is the bargaining agent. However, it does reinforce the nature of the bargaining rights of each local union. As the applicant argued, where the local unions are bargaining agents who create a council or an uncertified council of trade unions, it is less important *where* the bargaining rights came from, but what they do with them in terms of fashioning a collective agreement. Here the bargaining unit is province-wide, the rights of the local union tend to be found within the general framework and are manifested in the right to supply employees, file grievances, etc. However, section 146, separate and apart from any contractual rights, creates an independent set of bargaining rights for the local union and makes it a party to the collective agreement "with respect to the jurisdiction of the local trade union", which in this case is a local area, rather than province-wide. That is, each local union has separate bargaining rights and separate contractual rights under the collective agreement within its own jurisdiction *and no further*.

35. Therefore, Local 183 similarly has bargaining rights and a collective agreement with Sewer Tech through the operation of section 146(1).

36. There is also corroborative practical evidence supporting the Board's conclusions under the two grounds set out above. While the Board acknowledges that mere observance of the terms of a collective agreement does not create bargaining rights (see for example *Ecodyne Limited*, [1979] OLRB Rep. July 629; *The Corporation of the City of Etobicoke*, [1983] OLRB Rep. November 1825; *Myer Salit Limited*, [1984] OLRB Rep. October 1489; *Van Horne Construction Ltd.*, [2008] O.L.R.D. No. 3172 (QL) (August 5, 2008)), Sewer Tech's compliance with the terms of the applicant's agreement is consistent with the notion that Sewer Tech is bound by it and inconsistent with Sewer Tech's assertion that the accreditation should have no application to it. More specifically, under the language of Appendix "C" of the Vac Truck Agreement, Sewer Tech specifically agrees to comply with the full terms and conditions of the applicant's agreement. Furthermore, Sewer Tech does not contest Local 183's representation that it has done so. This includes Sewer Tech paying all the applicable remittances to Local 183, including payments to the applicant's industry fund, for work within Local 183's geographic jurisdiction. So not only is Sewer Tech not a stranger to the applicant's agreement, but is actively working under it and complying with its full terms and conditions. What Sewer Tech wants to do, as outlined in paragraph 6 of its April 8, 2022 submissions is to have "more competitive rates and conditions" than in the applicant's collective agreement. That is antithetical to the whole purpose of the accreditation provisions to provide a "level playing field" for all contractors performing the same work. Therefore, Sewer Tech's own conduct supports a conclusion that Local 183 holds bargaining rights for its construction labourers performing sewers and watermains work within the geographic scope of the bargaining unit while its reason for seeking exclusion from the accreditation order runs contrary to a proper interpretation and application of the accreditation provisions of the Act.

37. Accordingly, the Board finds that Sewer Tech shall be included in the bargaining unit as an employer on Schedule "E". For the purpose of clarity, the Board notes that any work performed by Sewer Tech other than sewers and watermains work in the geographic areas covered by the accreditation order will continue to be covered by the terms and conditions of the Vac Truck Agreement.

38. An employers' organization may seek accreditation as a bargaining agent of employers in the construction industry under section 134 of the Act only if a trade union or council of trade unions within the meaning of section 126(1) of the Act holds bargaining rights, whether by certification or voluntary recognition, in respect of a bargaining unit

of employees working in the construction industry employed by more than one employer operating a business in the construction industry and that union or council of unions entered into collective agreements with more than one such employer applicable to a bargaining unit of such employees. Section 134 of the Act provides:

Where a trade union or council of trade unions has been certified or has been granted voluntary recognition under section 18 as the bargaining agent for a unit of employees of more than one employer in the construction industry or where a trade union or council of trade unions has entered into collective agreements with more than one employer covering a unit of employees in the construction industry, an employers' organization may apply to the Board to be accredited as the bargaining agent for all employers in a particular sector of the industry and in the geographic area described in the said certificates, voluntary recognition documents or collective agreements, as the case may be.

39. In order to obtain accreditation, the applicant must establish it meets the conditions prescribed by section 136(3) of the Act, and also satisfy the Board that it represents a majority of the employers in the unit of employers the Board has determined is appropriate for collective bargaining and that those employers it represents employed a majority of the employees who were on the payrolls of the employers in the bargaining unit during the week immediately preceding the application date (or such other payroll week as established by the Board).

40. Section 136(3) of the Act provides:

Before accrediting an employers' organization under subsection (2), the Board shall satisfy itself that the employers' organization is a properly constituted organization and that each of the employers whom it represents has vested appropriate authority in the organization to enable it to discharge the responsibilities of an accredited bargaining agent.

41. The "double majority" requirement the applicant must satisfy to obtain accreditation is set out in sections 136(1) and 136(2) of the Act:

(1) Upon an application for accreditation, the Board shall ascertain,

(a) the number of employers in the unit of employers on the date of the making of the application who

have within one year prior to such date had employees in their employ for whom the trade union or council of trade unions has bargaining rights in the geographic area and sector determined by the Board to be appropriate;

- (b) the number of employers in clause (a) represented by the employers' organization on the date of the making of the application; and
 - (c) the number of employees of employers in clause (a) on the payroll of each such employer for the weekly payroll period immediately preceding the date of the application or if, in the opinion of the Board, the payroll period is unsatisfactory for any one or more of the employers in clause (a), such other weekly payroll period for any one or more of the said employers as the Board considers advisable.
- (2) If the Board is satisfied,
- (a) that a majority of the employers in clause (1) (a) is represented by the employers' organization; and
 - (b) that such majority of employers employed a majority of the employees in clause (1) (c),

the Board, subject to subsection (3), shall accredit the employers' organization as the bargaining agent of the employers in the unit of employers and for the other employers for whose employees the trade union or council of trade unions may, after the date of the making of the application, obtain bargaining rights through certification or voluntary recognition in the appropriate geographic area and sector.

42. No party has taken objection to the proposed bargaining unit described in the Board's decision dated January 14, 2022. Having regard to section 135 of the Act and the agreement of the parties, the Board determines the following unit of employers to be appropriate for collective bargaining:

1. All employers of employees engaged in sewer and watermain work for whom the Labourers' International Union of North America, Local 183 holds bargaining

rights, performing the work identified in paragraph 2 below, in Board Area Nos. 9, 10, 11, that part of Board Area 12 west of the Trent Severn Waterway, and the District Municipality of Muskoka (in Board Area 18):

2. The work covered by this accreditation certificate includes all work in the sewers and watermains sector on: (a) public property, (b) private property more than three feet from any building where the site is in excess of 1.5 hectares in size, but excludes work from the individual lot property line to the interior of new single family residential detached or semi-detached houses which are not townhouses or residential highrises (condominiums or rentals), (c) private property that is ultimately assumed as an easement, right-of-way or road allowance by the federal, provincial or municipal government or any other governmental authority, and (d) an easement, right-of-way, private roadway or road allowance on residential end use private property sites greater than 1.5 hectares in size.
3. The bargaining unit excludes employers bound by and performing work under any of the following collective agreements in accordance with past or existing practices as at the date hereof:
 - a. Collective Agreement between the Toronto and Area Road Builders' Association and a Council of Trade Unions acting as the representative and agent of Teamsters', Local 230 and Labourers' International Union of North America, Local 183 ("Local 183");
 - b. Collective Agreement between the Residential Low Rise Forming Contractors' Association of Metropolitan Toronto and Vicinity and Local 183;
 - c. Collective Agreement between various Landscaping Contractors and Local 183;
 - d. Collective Agreement between various independent companies bargaining as the Restoration Contractors Association and Local 183;
 - e. Collective Agreement between the Masonry Contractors' Association of Toronto Inc. and Masonry Council of Unions, Toronto and Vicinity,

- on behalf of Local 183 and the Bricklayers, Masons Independent Union of Canada, Local 1;
- f. Collective Agreement between various Plumbing Contractors and Local 183;
 - g. Collective Agreement between various Fencing Contractors and Local 183;
 - h. Provincial Civil Engineering Collective Agreement being a Collective Agreement between various civil contractors and the LiUNA Ontario Provincial District Council;
 - i. Collective Agreement between The Ontario Allied Construction Trades Council and the Electrical Power Systems Construction Association;
 - j. Collective Agreement between the Ontario Precast Manufacturers' Association and LiUNA, Ontario Provincial District Council;
 - k. Collective Agreement between Heavy Construction Association of Toronto and Local 183;
 - l. Labourers' Mainline Pipeline Agreement for Canada between Pipe Line Contractors Association of Canada and Local 183;
 - m. Labourers' Distribution Pipeline Agreement for Canada between Pipe Line Contractors Association of Canada and Local 183;
 - n. Collective Agreement between The Ontario Formwork Association and the Formwork Council of Ontario;
 - o. Collective Agreement between the Metropolitan Toronto Apartment Builders' Association and Local 183;
 - p. Collective Agreement between the Toronto Residential Construction Labour Bureau and Local 183;

- q. Collective Agreement between the Residential Framing Contractors' Association of Metropolitan Toronto and Vicinity and Local 183;
- r. Collective Agreement between the Utility Contractors Association of Ontario and LiUNA, Ontario Provincial District and its affiliated Local Unions; and
- s. Collective Agreement between the Ontario Concrete & Drain Contractors' Association and Local 183.

43. The Board finds that the documentary evidence filed by the applicant in accordance with the Board's Rules of Procedure is sufficient to prove that each of the employers it represents has authorized it to act as their bargaining agent in collective bargaining with the responding party.

44. Based on the parties' representations and the materials filed with the Board, the Board is satisfied that the Final Schedule "E" is comprised of the following 25 employers:

Schedule "E"

Aquatech Dewatering Company
Armagh Contractors Limited
Atlas Dewatering Corporation
CDC Contracting Inc.
Coco Paving Inc.
Condrain Company 1983 Limited
Dolente Concrete & Drain Company Limited
Earth Boring Co. Limited
EBC Inc.
Fernview Construction Limited
Great North Drain Ltd.
Groundworks Construction Company Ltd.
Hard Rock Sewer and Watermain Ltd.
Kapp Infrastructure Inc.
Mar-King Construction Company Limited
Memme Excavation Company Limited
Mircam Pipe Inspection Inc.
New-Alliance Ltd.
North Rock Group Ltd.
PGC Services Inc.

Pilen Construction of Canada Limited
Primrose Contracting (Ontario) Inc.
Sewer Technologies Inc.
TACC Construction Ltd.
Trillium Infrastructure Ltd.

45. The applicant filed documentary evidence establishing that it represents 23 of the 25 employers listed on Schedule "E". The Board therefore finds that the applicant represented a majority of the employers in the bargaining unit of employers that had employees for whom the responding party held bargaining rights performing work coming within the scope of the bargaining unit within one year prior to the application date. The applicant has therefore satisfied the condition set out in section 136(2)(a) of the Act as the first prerequisite for obtaining accreditation.

46. Nineteen of the 25 employers filed an Employer Filing in Form A-94 indicating they had employees on their payroll for the weekly pay period immediately preceding the date of the application. The total number of employees on the 19 employer filings is 241. Seventeen of the 19 employers who had employees on their payroll for the weekly pay period immediately prior to the date of application are represented by the applicant. The employers represented by the applicant employed 204 of the 241 employees at work for Schedule "E" employers in the relevant time period. There is no information before the Board to indicate that any other affected employer employed any other affected employees in the relevant period. Hence, the majority of employers employed the majority of employees contemplated by section 136(1)(c) of the Act at the relevant time. Having regard to this information, the Board is satisfied that the applicant has satisfied the condition set out in section 136(2)(b) of the Act as the second prerequisite for obtaining accreditation.

47. In the result, the Board finds that the applicant has established the "double majority" requirement prescribed in section 136(2) of the Act to entitle it to be accredited as the exclusive bargaining agent of the employers coming within the bargaining unit described in paragraph 42 above. That is, the applicant has established it represents a majority of the employers in the bargaining unit of employers and that those employers employed a majority of the employees who were on the payrolls of the employers in the bargaining unit during the week immediately preceding the application date.

48. Pursuant to section 136(2) of the Act, the Board hereby accredits the applicant as the exclusive bargaining agent of the employers in the unit of employers set out in paragraph 42 above and for all other employers for which the responding party held bargaining rights as of the date of application and for all other employers whose employees the responding party may, after May 19, 2021, the date this application was made, obtain bargaining rights through certification or voluntary recognition in the following bargaining unit:

1. All employers of employees engaged in sewer and watermain work for whom the Labourers' International Union of North America, Local 183 holds bargaining rights, performing the work identified in paragraph 2 below, in Board Area Nos. 9, 10, 11, that part of Board Area 12 west of the Trent Severn Waterway, and the District Municipality of Muskoka (in Board Area 18):
2. The work covered by this accreditation certificate includes all work in the sewers and watermains sector on: (a) public property, (b) private property more than three feet from any building where the site is in excess of 1.5 hectares in size, but excludes work from the individual lot property line to the interior of new single family residential detached or semi-detached houses which are not townhouses or residential highrises (condominiums or rentals), (c) private property that is ultimately assumed as an easement, right-of-way or road allowance by the federal, provincial or municipal government or any other governmental authority, and (d) an easement, right-of-way, private roadway or road allowance on residential end use private property sites greater than 1.5 hectares in size.
3. The bargaining unit excludes employers bound by and performing work under any of the following collective agreements in accordance with past or existing practices as at the date hereof:
 - a. Collective Agreement between the Toronto and Area Road Builders' Association and a Council of Trade Unions acting as the representative and agent of Teamsters', Local 230 and Labourers' International Union of North America, Local 183 ("Local 183");

- b. Collective Agreement between the Residential Low Rise Forming Contractors' Association of Metropolitan Toronto and Vicinity and Local 183;
- c. Collective Agreement between various Landscaping Contractors and Local 183;
- d. Collective Agreement between various independent companies bargaining as the Restoration Contractors Association and Local 183;
- e. Collective Agreement between the Masonry Contractors' Association of Toronto Inc. and Masonry Council of Unions, Toronto and Vicinity, on behalf of Local 183 and the Bricklayers, Masons Independent Union of Canada, Local 1;
- f. Collective Agreement between various Plumbing Contractors and Local 183;
- g. Collective Agreement between various Fencing Contractors and Local 183;
- h. Provincial Civil Engineering Collective Agreement being a Collective Agreement between various civil contractors and the LiUNA Ontario Provincial District Council;
- i. Collective Agreement between The Ontario Allied Construction Trades Council and the Electrical Power Systems Construction Association;
- j. Collective Agreement between the Ontario Precast Manufacturers' Association and LiUNA, Ontario Provincial District Council;
- k. Collective Agreement between Heavy Construction Association of Toronto and Local 183;
- l. Labourers' Mainline Pipeline Agreement for Canada between Pipe Line Contractors Association of Canada and Local 183;
- m. Labourers' Distribution Pipeline Agreement for Canada between Pipe Line Contractors Association of Canada and Local 183;

- n. Collective Agreement between The Ontario Formwork Association and the Formwork Council of Ontario;
- o. Collective Agreement between the Metropolitan Toronto Apartment Builders' Association and Local 183;
- p. Collective Agreement between the Toronto Residential Construction Labour Bureau and Local 183;
- q. Collective Agreement between the Residential Framing Contractors' Association of Metropolitan Toronto and Vicinity and Local 183;
- r. Collective Agreement between the Utility Contractors Association of Ontario and LiUNA, Ontario Provincial District and its affiliated Local Unions; and
- s. Collective Agreement between the Ontario Concrete & Drain Contractors' Association and Local 183.

49. The applicant has asked that if this application is successful that it be granted a single certificate of accreditation to cover both the bargaining rights granted by this application and its previously acquired bargaining rights further to the guidelines established by the Board in its decision in *The Residential Low Rise Forming Contractors Association of Metropolitan Toronto and Vicinity v Labourers' International Union of North America*, 2020 CanLII 6776 (ON LRB) (January 24, 2020) where the Board said:

6. Before dealing with the merits of this matter, the Board would like to comment on the proper procedure to be followed in this type of case. While the Board appreciates that the applicant proceeded as it did based upon Board precedents from the previous century, it is neither efficient nor productive to deal with reconsideration requests of decisions over two decades old. The Board fully understands why the applicant wishes to have a single accreditation order rather than multiple accreditation orders. However, there is a more efficient way to achieve this end. In the future, an applicant in this situation should simply file an accreditation application for the "new area" and at the same time include

in its application a request to vary in the "old area" if the application is successful. This method of proceeding is simple, straightforward and consonant with the observations about appropriate bargaining units made by the Chair of the Board in *Enwave Energy Corporation*, 2019 CanLII 72125 (ON LRB) (July 29, 2019). Nevertheless, the Board will deal with this application in the manner proposed by the parties.

50. The applicant was previously accredited to represent sewers and watermains employers employing construction labourers in Ontario Labour Relations Board Area No. 8 and the County of Simcoe in *Metropolitan Toronto Sewer and Watermain Contractors Association*, [1989] OLRB Rep. December 1226. The certificate of accreditation should include both those areas and the areas encompassed by the current application.

51. Therefore, a certificate of accreditation shall issue to the applicant for the following bargaining unit:

1. All employers of employees engaged in sewer and watermain work for whom the Labourers' International Union of North America, Local 183 holds bargaining rights, performing the work identified in paragraph 2 below, in the City of Toronto, the Regional Municipalities of Peel and York, the Towns of Oakville and Halton Hills and that portion of the Town of Milton within the geographic Townships of Esquesing and Trafalgar, and the Town of Ajax and the City of Pickering in the Regional Municipality of Durham (Board Area 8); the Regional Municipality of Durham (except for the Town of Ajax and the City of Pickering), the geographic Township of Cavan in the County of Peterborough and the geographic Township of Manvers in the City of Kawartha Lakes (Board Area 9); the Town of Cobourg, the Municipality of Port Hope, and the geographic Townships of Hope, Hamilton, Haldimand and Alnwick in the County of Northumberland (Board Area 10); the County of Peterborough (except for the geographic Township of Cavan), the City of Kawartha Lakes (except for the geographic Township of Manvers) and the County of Haliburton (Board Area 11); that part of Board Area 12 west of the Trent Severn Waterway; and the County of Simcoe and the District Municipality of Muskoka (Board Area 18).

2. The work covered by this accreditation certificate includes all work in the sewers and watermains sector on: (a) public property, (b) private property more than three feet from any building where the site is in excess of 1.5 hectares in size, but excludes work from the individual lot property line to the interior of new single family residential detached or semi-detached houses which are not townhouses or residential highrises (condominiums or rentals), (c) private property that is ultimately assumed as an easement, right-of-way or road allowance by the federal, provincial or municipal government or any other governmental authority, and (d) an easement, right-of-way, private roadway or road allowance on residential end use private property sites greater than 1.5 hectares in size.

3. The bargaining unit excludes employers bound by and performing work under any of the following collective agreements in accordance with past or existing practices as at the date hereof:

- a. Collective Agreement between the Toronto and Area Road Builders' Association and a Council of Trade Unions acting as the representative and agent of Teamsters', Local 230 and Labourers' International Union of North America, Local 183 ("Local 183");
- b. Collective Agreement between the Residential Low Rise Forming Contractors' Association of Metropolitan Toronto and Vicinity and Local 183;
- c. Collective Agreement between various Landscaping Contractors and Local 183;
- d. Collective Agreement between various independent companies bargaining as the Restoration Contractors Association and Local 183;
- e. Collective Agreement between the Masonry Contractors' Association of Toronto Inc. and

- Masonry Council of Unions, Toronto and Vicinity, on behalf of Local 183 and the Bricklayers, Masons Independent Union of Canada, Local 1;
- f. Collective Agreement between various Plumbing Contractors and Local 183;
 - g. Collective Agreement between various Fencing Contractors and Local 183;
 - h. Provincial Civil Engineering Collective Agreement being a Collective Agreement between various civil contractors and the LiUNA Ontario Provincial District Council;
 - i. Collective Agreement between The Ontario Allied Construction Trades Council and the Electrical Power Systems Construction Association;
 - j. Collective Agreement between the Ontario Precast Manufacturers' Association and LiUNA, Ontario Provincial District Council;
 - k. Collective Agreement between Heavy Construction Association of Toronto and Local 183;
 - l. Labourers' Mainline Pipeline Agreement for Canada between Pipe Line Contractors Association of Canada and Local 183;
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 - n. Collective Agreement between The Ontario Formwork Association and the Formwork Council of Ontario;
 - o. Collective Agreement between the Metropolitan Toronto Apartment Builders' Association and Local 183;

- p. Collective Agreement between the Toronto Residential Construction Labour Bureau and Local 183;
- q. Collective Agreement between the Residential Framing Contractors' Association of Metropolitan Toronto and Vicinity and Local 183;
- r. Collective Agreement between the Utility Contractors Association of Ontario and LiUNA, Ontario Provincial District and its affiliated Local Unions; and
- s. Collective Agreement between the Ontario Concrete & Drain Contractors' Association and Local 183.

52. As there is no longer any requirement to compile a Schedule "F" in this application, the Board wishes to stipulate that the issuance of the accreditation certificate herein does not prejudice or adversely affect, in any way, the responding party's bargaining rights with respect to employers who were not listed on Schedule "E", for whatever reason.

53. A certificate of accreditation shall issue.

"Jack J. Slaughter"
for the Board