



ONTARIO LABOUR RELATIONS BOARD

OLRB Case No: **0463-24-R**

Southwest Residential Construction Labour Bureau, Applicant v
Labourers' International Union of North America, Local 837, Responding
Party

BEFORE: John D. Lewis, Vice-Chair

DECISION OF THE BOARD: August 1, 2024

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"). It was filed with the Board on May 24, 2024. The applicant seeks to be accredited as the bargaining agent of employers of construction labourers engaged in the on-site construction of single and semidetached houses, row houses, maisonettes and townhomes for whom the responding party, Labourers' International Union of North America, Local 837, holds bargaining rights in the residential sector of the construction industry in the County of Brant and Norfolk County; the Regional Municipality of Niagara and Haldimand County; the Regional Municipality of Waterloo (except that portion of the geographic Township of Beverly annexed by North Dumfries Township); and the City of Hamilton, the City of Burlington, that portion of the geographic Township of Beverly annexed by North Dumfries Township and that portion of the Town of Milton within the geographic townships of Nassagaweya and Nelson (Board Area Nos. 4, 5, 6 and 26 respectively).

2. On the basis of the materials filed with the Board and the representations filed in conjunction with those materials, the Board finds that the applicant, Southwest Residential Construction Labour Bureau ("SRCLB"), 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. Furthermore, the Board is satisfied on the basis of the written authorizations filed by the SRCLB that each of the employers that SRCLB

represents has vested the appropriate authority in SRCLB to enable it to discharge the responsibilities of an accredited bargaining agent.

3. The Board further finds that the responding party is a trade union within the meaning of sections 1(1) and 126 of the Act.

4. 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."

5. In a decision dated June 28, 2024, the Board directed that notice of this application be provided to any employer that may be affected by this application. The SRCLB was directed to send forthwith to the employers on the List of Employers filed by the applicant and responding party, a copy of that decision together with a blank "Employer Filing, Application for Accreditation, Construction Industry" (Form A-94) and a blank "Accreditation: List of Employees" and to provide the Board and the responding party with confirmation of delivery to those employers. The parties further agreed on the form of notice that is to be provided and that the notice would be made accessible on the Board's website. The Board also directed that a copy of the notice would be included as an advertisement in the following publications: The Daily Commercial News, The Waterloo Region Record, The Hamilton Spectator, The St. Catharines Record and The Niagara Falls Review, during the week ending July 12, 2024.

6. The SRCLB has confirmed that the listed employers were provided with a copy of the Board's decision dated June 28, 2024, a blank Form A-94, Employer Filing, Application for Accreditation along with a blank Accreditation - List of Employees. The applicant has further confirmed that it placed the above notices as directed by the Board. 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 June 28, 2024 decision, the Board set an Employer Filing Date of July 29, 2024, 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. The Board received such materials

from ten (10) employers by the Employer Filing Date. No employer objected to the application. Nine of the ten employers indicated that the applicant was entitled to bargain on their behalf.

8. In these circumstances, including the reasons set out below, the Board is satisfied that it can make a final determination of this matter without a hearing based upon the materials filed with the Board.

9. No party has taken objection to the proposed bargaining unit described in the Board's decision of June 28, 2024. 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:

all employers of construction labourers engaged in the on-site construction of single and semidetached houses, row houses, maisonettes and townhouses for whom the Labourers' International Union of North America, Local 837 has bargaining rights in the County of Brant and Norfolk County; the Regional Municipality of Niagara and Haldimand County; the Regional Municipality of Waterloo (except that portion of the geographic Township of Beverly annexed by North Dumfries Township); and the City of Hamilton, the City of Burlington, that portion of the geographic Township of Beverly annexed by North Dumfries Township and that portion of the Town of Milton within the geographic townships of Nassagaweya and Nelson, in the residential sector of the construction industry, save and except employers bound by and performing work under the Collective Agreement between The Ontario Formwork Association and The Formwork Council of Ontario.

10. 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 employees. Section 134 of the Act provides:

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.

11. In order to obtain accreditation, the applicant must establish that 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.

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

136.(3) 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.

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

136. (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.

14. The Board has received employer filings from 10 potentially affected employers. Ten of the filings were from the 15 employers that the responding party trade union had identified in its response. The responding party, in its response also indicated that the 15 employers it held bargaining rights with, employed a total of 184 employees. The employers listed on Schedule "E" are those employers who employed individuals affected by the application during the one-year period preceding the date of application. 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 employers:

Schedule "E"

1. Ambria Residential Inc.

2. Averton Residential
3. Cachet Homes Corp.
4. Cairnwood Developments Inc.
5. Dunsire Homes Inc.
6. Empire Canada Homes G.P. Inc, (formerly ECMI Management Inc.)
7. Geolin Services Limited
8. Heathwood Homes Ltd.
9. LH (Niagara) Ltd. & Lancaster Homes Inc.
10. LIV Communities
11. Marina (Green Acres) Developments Inc.
12. Pine Glen Homes
13. Spallacci Contracting Inc.
14. Starwood Homes (2014) Limited
15. Tobyn Park Homes

15. The SRCLB filed documentary evidence establishing that it represents nine (9) employers listed on the 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.

16. The Accreditation - List of Employees, which accompanied the Form A-94 Employer Filing, filed by the individual employers, sets out the number of employees that each employer had at each job site with details of the location and the type of construction involved. According to section 136(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. Ten employers filed lists of employees. The Board has reviewed the filed lists and has not counted duplicated names of individuals which appear on the lists due to the fact that the individual worked at more than one site. Out of an abundance of caution the Board has also not counted employees who were identified on the lists as holding the position of Site Supervisor, Assistant Site Supervisor, Excavation Operator or Handyperson. The Board notes, however, that the Schedule "B" to the filed collective agreement between the SRCLB and Local 837, contains classifications for Excavation Labourer and Handyperson and the Board is not making any finding one way or the other as to whether these employees are included in the bargaining unit; they are simply

numerically irrelevant as set out below. On the basis of the evidence filed by the parties and on the basis of the information filed by employers affected by this application, the Board finds that, in accordance with section 136(2)(b) of the Act, the applicant represents employers who employed a majority of employees who worked in the period defined by section 136(1)(c) of the Act.

17. The total number of employees (i.e. construction labourers) on the relevant employer filings, noting the above employees who have not been counted, is 105, which represents the employees on the employers' payroll for the weekly pay period immediately preceding the date of application. The nine employers represented by the applicant employed 104 of the 184 employees at work for Schedule "E" employers in the relevant time period. The Board notes that the discrepancy between 105 employees and 104 employees is the result of the Board not finding a written authorization from Tobyn Park Homes, appointing and authorizing the SRCLB to be its accredited bargaining agent. Tobyn Park Homes, however, had filed a Form A-94, Employer Filing, Application for Accreditation along with an Accreditation - List of Employees, indicating it had one employee in the unit. 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.

18. 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 8 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.

19. 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 9 above and for all other employers for whose employees the responding party may, after May 24, 2024, the date this application was made, obtain

