



ONTARIO LABOUR RELATIONS BOARD

OLRB Case No: **0683-22-R**

The Greater Hamilton & Niagara Construction Association,
Applicant v International Union of Operating Engineers, Local 793,
Responding Party

BEFORE: M. David Ross, Vice-Chair

DECISION OF THE BOARD: September 23, 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"). The applicant, the Greater Hamilton & Niagara Construction Association ("the Association") seeks to be accredited as the bargaining agent for certain employers which have a bargaining relationship with the International Union of Operating Engineers, Local 793 ("the Union").

2. The process by which an applicant Association becomes accredited is set out in sections 134 to 136 of the Act. These sections of the Act provide as follows:

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.

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.

(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.

3. On the basis of the materials filed with the Board, the Board finds that the applicant is an employer's organization within the meaning of sections 1(1) and 126 of the Act, and further that it is a properly-constituted organization for the purposes of section 134 of the Act.

4. The responding party is a trade union within the meaning of sections 1(1) and 126 of the Act, which has acquired bargaining rights for a unit of employees of more than one employer in the construction industry who fall within the bargaining unit described below.

5. On the basis of the material in the application and the parties' submissions, as described in Board's decision dated August 3, 2022, the appropriate bargaining unit is:

All employers for whom the International Union of Operating Engineers, Local 793 has bargaining rights in the sewer and watermain, roads, and heavy engineering sectors of the construction industry in the Regional Municipality of Niagara and Haldimand County, and in 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, save and except employers bound by and performing work under any of the following Collective Agreements:

- (a) Schedules A, B, C and D of the Provincial Collective Agreement between the Operating Engineers Employer and Employee Bargaining Agencies in accordance with local area practice;
- (b) Schedule H of the Provincial Collective Agreement between the Operating Engineers Employer and Employee Bargaining Agencies, but only insofar as it applies to 1826269 Ontario Inc. o/a Palcon Excavating, Jasen Enterprises, James Kemp Construction, Landmark Contracting Ltd., and Reimar Forming & Construction, and any other contractor who applies Schedule H of the Provincial Collective Agreement and not the HAND Association of Sewer, Watermain and Road Contractors Collective

Agreement as at June 24, 2022, and no other contractor;

- (c) The Mainline Pipeline Agreement, The Distribution Pipeline Agreement and the Pipeline Maintenance and Service Agreement for Canada, all between the Pipe Line Contractors Association of Canada and the International Brotherhood of Teamsters, International Union of Operating Engineers, Labourers International Union of North America and United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada;
- (d) The Collective Agreement between the Ontario Formwork Association and the Formwork Council of Ontario, and the
- (e) The Collective Agreement between the Utility Contractors' Association Of Ontario and the International Union Of Operating Engineers, Local 793.

6. By decision dated August 3, 2022, the Board directed the Association to deliver a Notice to any affected contractor that it or the Union identified. The Association confirmed that it had provided those notices.

7. The parties have agreed, and no employer has disputed, the composition of list of employers defined by section 136(1)(a) of the Act. These are the employers who, within one year before the date of the application, had employees in their employ for whom the responding party trade union had bargaining rights in the bargaining unit determined above. This list is sometimes referred to as "Schedule "E" to the application. This list contains the names of the following contractors:

- 1) 714794 Ontario Limited o/a LM EnterprisesAccurate Railroad Construction Ltd.
- 2) 821694 Ontario Inc. O/A Battlefield Excavating
- 3) Alfred Beam Excavating Limited
- 4) All Around Contracting Inc.
- 5) Ambler & Co. Inc
- 6) Amico Infrastructures Inc.

- 7) Associated Paving Company Ltd.
- 8) Backwoods Excavating Inc.
- 9) Badger Daylighting Corp.
- 10) Baiocco Construction
- 11) BEECH Infrastructure Group Inc.
- 12) Brennan Paving & Construction Co.
- 13) Bronte Construction Ltd.
- 14) Cameron Trucking Limited
- 15) Carlington Construction Inc.
- 16) Capital Paving Inc.
- 17) Catalina Excavating Inc.
- 18) Coco Paving Inc./Green Infrastructure Partners Inc.
- 19) Cona Contracting Inc.
- 20) Deso Construction Limited
- 21) DVC Contracting
- 22) Dufferin Construction Company, a division of CRH Canada Group
Inc.
- 23) Ground Breakers Contracting Ltd.
- 24) HC Matcon Inc.
- 25) In4structure Ltd.
- 26) JC Infrastructure Ltd.
- 27) Jim Mattice Co. Ltd.
- 28) Kada Group Inc.
- 29) King Paving & Construction Ltd.
- 30) MCL Concrete Ltd
- 31) Marbelle Group Inc.
- 32) McNally Construction
- 33) Metric Contracting Services Corporation
- 34) Mountsberg Excavating Inc.
- 35) Navacon Construction Inc.
- 36) Neil Montague Construction Limited
- 37) New-Alliance Ltd.

- 38) Oakridge Landscaping
- 39) Powell Foundations Inc.
- 40) Rankin Construction Inc.
- 41) Reimar Construction Corporation
- 42) Sercon Construction
- 43) Sitemaster Equipment and Service Inc.
- 44) Soletanche Bachy Canada
- 45) Sona Construction Limited
- 46) Steed and Evans Limited
- 47) TACC Construction Ltd.
- 48) Tectonic Infrastructure Inc.
- 49) Terracon Underground Ltd.
- 50) Wesroc Construction Ltd.
- 51) Wm Groves Ltd.

8. Section 136 requires the Board to find a “double majority”. The “employer majority” is satisfied when the applicant Association is able to demonstrate that it represents a majority of employers from the above list. The Board has interpreted the word “represents” in section 136(2)(a) of the Act as meaning that the Association is authorized to bring an application for accreditation on behalf of the employer.

9. The “employee majority” is satisfied by demonstrating that the applicant Association represents employers who employed a majority of employees who worked in the period defined by section 136(1)(c) of the Act, that is, in the weekly payroll period immediately preceding the filing of the application.

10. The Board must be satisfied that the applicant Association represents both types of majorities.

11. 23 of the identified contractors responded to the Board’s August 3, 2022 decision. All of them are represented by the applicant. None of the responses contradicted any statement in the application. None of the contractors served with this application indicated any opposition to the application. No objection was received to the application. Accordingly, the applicant has satisfied the condition set out in section 136(2)(a) of the Act as the first prerequisite for obtaining accreditation.

12. The Board finds that every bargaining unit employee employed in the weekly payroll period immediately preceding the application filing date was employed by a contractor which is represented by the applicant. The applicant has therefore satisfied the condition set out in section 136(2)(b) of the Act as the second prerequisite for obtaining accreditation.

13. Therefore, 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 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.

14. As has been the Board's practice for many years, the compilation of a final Schedule "F" has been waived. The Board is satisfied that the notice being delivered to each of the affected contractors and being put on the Board's website satisfy the requirement to give notice to parties that may be affected by this application. Since the Board has waived the requirements to compile a Schedule "F" in this application, the Board notes that the issuance of the accreditation certificate herein does not prejudice or adversely affect, in any way, the responding party trade union's bargaining rights with respect to employers who are not listed in this decision, for whatever reason.

15. There is no need for a hearing date in this application. The affected contractors were made aware of the proceedings, and none of them has suggested any reason why the Board ought not to issue the accreditation order.

16. Accordingly, a certificate of accreditation will issue to the applicant for the unit of employers which has been found by the Board to be appropriate as set out in paragraph 5 above.

"M. David Ross"
for the Board