



ONTARIO LABOUR RELATIONS BOARD

OLRB Case No: **0753-24-R**

Toronto Residential Construction Labour Bureau, Applicant v
Labourers' International Union of North America, Local 183, Responding
Party

BEFORE: Michael McFadden, Vice-Chair

DECISION OF THE BOARD: October 8, 2024

Introduction

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 Toronto Residential Construction Labour Bureau ("TRCLB"), seeks to be accredited as the bargaining agent of employers of certain employees for whom Labourers' International Union of North America, Local 183 ("LIUNA Local 183"), holds bargaining rights in the residential sector of the construction industry in certain specified Ontario Labour Relations Board Areas ("Board Areas").
2. The TRCLB is already the accredited bargaining agent of employers of certain employees for whom LIUNA Local 183 holds bargaining rights in the residential sector of the construction industry in certain specified Board Areas (apart from those identified in the current application). In effect, in this application the TRCLB seeks to expand the geographic scope of its accreditation, amend the description of "low-rise housing", and vary the existing accreditation order accordingly to align it with these same features (which will make it consistent with the scope clause of the existing accredited collective agreement).
3. The Board finds that the TRCLB is an employers' organization within the meaning of sections 1(1) and 126 of the Act and that it meets the requirements to be accredited as a properly constituted employers' organization under subsection 136(3) of the Act. The Board further finds

that LIUNA Local 183 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."

Accreditation Notice

5. In a decision dated July 18, 2024, the Board directed the TRCLB to provide notice of this application ("Notice") to all the employers that LIUNA Local 183 had listed on Schedule "E" to its response, and to any other employer the TRCLB believed may be affected by this 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 the TRCLB to have published a copy of the Notice in four publications utilized by construction industry contractors that service the affected geographic areas and to send a copy of the Board's July 18, 2024 decision, together with a blank "Employer Filing, Application for Accreditation, Construction Industry" (Form A-94) and a blank "Accreditation: List of Employees" to each of the employers on the List of Employers filed by the TRCLB and LIUNA Local 183.

6. By way of correspondence dated July 31, 2024, counsel to the TRCLB confirmed that it had placed the notices and delivered the requisite documents to the employers on the List of Employers, as directed by the Board.

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

Accreditation Filings

8. In its July 18, 2024 decision, the Board set an Employer Filing Date of August 22, 2024, by which time any affected employer wishing to participate in the application was required to serve and file specified materials, including an "Employer Filing, Application for Accreditation,

Construction Industry" (Form A-94) along with the required Schedule "A" to the Form A-94. The Board received materials from 11 employers by the Employer Filing Date. No employer objected to the application. All employers indicated that the TRCLB was entitled to bargain on their behalf.

9. 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 on the materials filed with the Board.

Accreditation Requirements

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 such 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 TRCLB 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 (or such other payroll week as established by the Board).

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 TRCLB must satisfy to obtain accreditation is set out in sections 136(1) and 136(2) of the Act as follows:

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.

Accreditation Bargaining Unit

14. No party has raised an objection to the proposed bargaining unit described in the Board's decision dated July 18, 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 employees engaged in the onsite construction of all types of low-rise housing and their natural amenities for whom LIUNA Local 183 has bargaining rights in Board Areas 7, 8, 18, and 27 in the residential sector of the construction industry:

in Board Areas 7, 27, and the District of Muskoka, low-rise housing means housing of not more than three (3) storeys in height, basement plus three (3) storeys; as well as four (4) storey (basement plus four (4) storeys) single family townhouses; and Light Wood Framed Apartment Buildings, being apartment buildings where the building superstructure is light wood framing and also those where the superstructure is a mix of concrete (including Slab on Grade/Core Slab) and light wood framing, where the use of LVL, CLT, NLT or other engineered wood products, or other beams or posts in a light wood framed superstructure does not alter the character of a light wood framed building, and where the use of prefabricated light wood floor or wall panels, including those containing steel studs, are included in the definition of light wood framing; and

in Board Area 8 and Simcoe County for in respect of elevated housing of not more than three (3) storeys in height (basement plus three (3) storeys); and in respect of four (4) storey (basement plus four (4) storeys) single family townhouses; and Light Wood Framed Apartment Buildings, being apartment buildings where the building superstructure is a mix of light wood framed and also those where the superstructure is concrete (including Slab on Grade/Core Slab) and light wood framing, where the use of LVL, CLT, NLT or other engineered wood products, or other beams or posts in a light wood framed superstructure does not alter the character of a light wood framed building, and where the use of pre-fabricated light wood floor or wall panels, including those containing steel studs, are included in the definition of light wood framing.

It is also noted that employers bound by, and when working under any of the following collective agreements in accordance with past or existing practices as at the date hereof, are not included in the said unit of employers, namely;

(a) Collective Agreement between the Ontario Formwork Association and the Formwork Council of Ontario;

(b) Collective Agreement between the Residential Low-Rise Forming Contractors Association and LIUNA Local 183;

(c) Collective Agreement between the Ontario Concrete & Drain Contractors Association and LIUNA Local 183;

(d) Collective Agreement between the Metropolitan Toronto Apartment Builders' Association and LIUNA Local 183;

(e) Collective Agreement between the Residential Framing Contractors Association of

Metropolitan Toronto and Vicinity and LIUNA Local 183;

(f) Collective Agreement between the Utility Contractors Association of Ontario and Labourers' International Union of North America, Ontario Provincial District Council and its affiliated Local Unions;

(g) Collective Agreements between certain landscaping contractors and LIUNA Local 183;

(h) Collective Agreements between the Building Restorations and Associated Work Contractors and LIUNA Local 183;

(i) Collective Agreement between the Masonry Contractors Association of Toronto Inc. and Masonry Council of Unions, Toronto & Vicinity;

(j) Collective Agreements between various plumbing contractors and LIUNA Local 183;

(k) Collective Agreements between various fencing contractors and LIUNA Local 183;

(l) Collective Agreement between the Residential Tile Contractors Association and LIUNA Local 183; and

(m) Collective Agreement between the Residential Floor Leveling Association and LIUNA Local 183.

TRCLB Members and Support

15. The Board finds that the documentary evidence filed by the TRCLB 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 LIUNA Local 183.

16. 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 18 employers:

Schedule "E"

Cachet Estate Homes

Coram Construction

Daniels Corporation

Dermil Limited

Fieldgate Construction Management Inc.

Firstview Homes

Fusion Corp.

Gemini Homes

Great Gulf Ltd.

Greenpark Homes

Infinity Fine Homes Inc.

Lakeview Homes Inc.

Mattamy Homes Ltd.

Menkes Developments

Saberwood Homes

Solmar Homes Inc.

Treasure Hill Homes

Tribute Communities Inc.

17. The TRCLB filed documentary evidence establishing that it represents 11 of the employers listed on the Schedule "E". The Board therefore finds that the TRCLB represented a majority of the employers in the bargaining unit of employers that had employees for whom LIUNA Local 183 held bargaining rights performing work coming within the scope of the bargaining unit within one year prior to the application date. The TRCLB has, therefore, satisfied the condition set out in section 136(2)(a) of the Act as the first prerequisite for obtaining accreditation.

18. Eleven employers of the 18 listed on Schedule "E", above, filed an Employer Filing (Form A-94) indicating that they had employees on their payroll for the weekly pay period immediately preceding the date of application performing work within the geographic scope of the bargaining unit. The total number of employees indicated in the Employer Filings as having performed work within the geographic scope of this application is 495. All 11 of the employers who had employees on their payroll for the weekly pay period immediately prior to the date of application are represented by the TRCLB. The employers represented by the TRCLB employed 495 of 495 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 TRCLB has satisfied the condition set out in section 136(2)(b) of the Act as the second prerequisite for obtaining accreditation.

19. In the result, the Board finds that the TRCLB 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 14, above. That is, the TRCLB has established that 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.

Accreditation Certificate to Issue

20. Pursuant to section 136(2) of the Act, the Board hereby accredits the TRCLB as the exclusive bargaining agent of employers in the unit of employers set out in paragraph 14 above and for all other

employers for which the LIUNA Local 183 held bargaining rights as of the date of application and for all other employers whose employees the LIUNA Local 183 may, after June 25, 2024, the date this application was made, obtain bargaining rights through certification or voluntary recognition in the following bargaining unit:

all employers of construction employees engaged in the onsite construction of all types of low-rise housing and their natural amenities for whom LIUNA Local 183 has bargaining rights in Board Areas 7, 8, 18, and 27 in the residential sector of the construction industry:

in Board Areas 7, 27, and the District of Muskoka, low-rise housing means housing of not more than three (3) storeys in height, basement plus three (3) storeys; as well as four (4) storey (basement plus four (4) storeys) single family townhouses; and Light Wood Framed Apartment Buildings, being apartment buildings where the building superstructure is light wood framing and also those where the superstructure is a mix of concrete (including Slab on Grade/Core Slab) and light wood framing, where the use of LVL, CLT, NLT or other engineered wood products, or other beams or posts in a light wood framed superstructure does not alter the character of a light wood framed building, and where the use of prefabricated light wood floor or wall panels, including those containing steel studs, are included in the definition of light wood framing; and

in Board Area 8 and Simcoe County for in respect of elevatored housing of not more than three (3) storeys in height (basement plus three (3) storeys); and in respect of four (4) storey (basement plus four (4) storeys) single family townhouses; and Light Wood Framed Apartment Buildings, being apartment buildings where the building superstructure is a mix of light wood framed and also those where the superstructure is concrete (including Slab on Grade/Core Slab) and light wood framing, where the use of LVL, CLT, NLT or other engineered wood products, or other beams or posts in a light wood framed superstructure does not alter the character of a light wood framed building, and where the use of pre-

fabricated light wood floor or wall panels, including those containing steel studs, are included in the definition of light wood framing.

It is also noted that employers bound by, and when working under any of the following collective agreements in accordance with past or existing practices as at the date hereof, are not included in the said unit of employers, namely;

- (a) Collective Agreement between the Ontario Formwork Association and the Formwork Council of Ontario;
- (b) Collective Agreement between the Residential Low-Rise Forming Contractors Association and LIUNA Local 183;
- (c) Collective Agreement between the Ontario Concrete & Drain Contractors Association and LIUNA Local 183;
- (d) Collective Agreement between the Metropolitan Toronto Apartment Builders' Association and LIUNA Local 183;
- (e) Collective Agreement between the Residential Framing Contractors Association of Metropolitan Toronto and Vicinity and LIUNA Local 183;
- (f) Collective Agreement between the Utility Contractors Association of Ontario and Labourers' International Union of North America, Ontario Provincial District Council and its affiliated Local Unions;
- (g) Collective Agreements between certain landscaping contractors and LIUNA Local 183;

- (h) Collective Agreements between the Building Restorations and Associated Work Contractors and LIUNA Local 183;
- (i) Collective Agreement between the Masonry Contractors Association of Toronto Inc. and Masonry Council of Unions, Toronto & Vicinity;
- (j) Collective Agreements between various plumbing contractors and LIUNA Local 183;
- (k) Collective Agreements between various fencing contractors and LIUNA Local 183;
- (l) Collective Agreement between the Residential Tile Contractors Association and LIUNA Local 183; and
- (m) Collective Agreement between the Residential Floor Leveling Association and LIUNA Local 183.

21. The TRCLB 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. The Board, 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) established guidelines for doing so, stating as follows:

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 TRCLB proceeded as it did based upon Board precedents from the previous century, it is neither efficient nor productive to deal with reconsideration request of decisions of over two decades old. The Board fully understands why the TRCLB 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 TRCLB 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.

22. The TRCLB was previously accredited to represent all employers of construction employees engaged in the on-site construction of low-rise residential housing bound to Local 183 in Ontario Labour Relations Board Area 8 and Simcoe County in Board Area 18 pursuant to a certificate issued by the Ontario Labour Relations Board on January 22, 2001 in *Toronto Residential Construction Labour Bureau* 2001 CanLII 18655 (ON LRB), and then amended in *Toronto Residential Construction Labour Bureau* 2001 CanLII 12238 (ON LRB). The certificate of accreditation should include both those areas encompassed by the previous accreditation decision and those areas encompassed by the current application.

23. Therefore, a certificate of accreditation shall issue to the TRCLB for the following unit:

all employers of construction employees engaged in the onsite construction of all types of low-rise housing and their natural amenities for whom LIUNA Local 183 has bargaining rights in Board Areas 7, 8, 18, and 27 in the residential sector of the construction industry:

in Board Areas 7, 27, and the District of Muskoka, low-rise housing means housing of not more than three (3) storeys in height, basement plus three (3) storeys; as well as four (4) storey (basement plus four (4) storeys) single family townhouses; and Light Wood Framed Apartment Buildings, being apartment buildings where the building superstructure is light wood framing and also those where the superstructure is a mix of concrete (including Slab on Grade/Core Slab) and light wood framing, where the use of LVL, CLT, NLT or other engineered wood products, or other beams or posts in a light wood framed superstructure does not alter the character of a light wood framed building, and where

the use of prefabricated light wood floor or wall panels, including those containing steel studs, are included in the definition of light wood framing; and

in Board Area 8 and Simcoe County for in respect of elevated housing of not more than three (3) storeys in height (basement plus three (3) storeys); and in respect of four (4) storey (basement plus four (4) storeys) single family townhouses; and Light Wood Framed Apartment Buildings, being apartment buildings where the building superstructure is a mix of light wood framed and also those where the superstructure is concrete (including Slab on Grade/Core Slab) and light wood framing, where the use of LVL, CLT, NLT or other engineered wood products, or other beams or posts in a light wood framed superstructure does not alter the character of a light wood framed building, and where the use of prefabricated light wood floor or wall panels, including those containing steel studs, are included in the definition of light wood framing.

It is also noted that employers bound by, and when working under any of the following collective agreements in accordance with past or existing practices as at the date hereof, are not included in the said unit of employers, namely;

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- (e) Collective Agreement between the Residential Framing Contractors Association of Metropolitan Toronto and Vicinity and LIUNA Local 183;
- (f) Collective Agreement between the Utility Contractors Association of Ontario and Labourers' International Union of North America, Ontario Provincial District Council and its affiliated Local Unions;
- (g) Collective Agreements between certain landscaping contractors and LIUNA Local 183;
- (h) Collective Agreements between the Building Restorations and Associated Work Contractors and LIUNA Local 183;
- (i) Collective Agreement between the Masonry Contractors Association of Toronto Inc. and Masonry Council of Unions, Toronto & Vicinity;
- (j) Collective Agreements between various plumbing contractors and LIUNA Local 183;
- (k) Collective Agreements between various fencing contractors and LIUNA Local 183;
- (l) Collective Agreement between the Residential Tile Contractors Association and LIUNA Local 183; and
- (m) Collective Agreement between the Residential Floor Leveling Association and LIUNA Local 183.

24. 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, LIUNA Local 183's bargaining rights with respect to employers who were not listed on the Schedule "E", for whatever reason.

25. A certificate of accreditation shall issue.

“Michael McFadden”
for the Board