



ONTARIO LABOUR RELATIONS BOARD

OLRB Case No: **0781-24-R**

Metropolitan Toronto Apartment Builders' Association, Applicant
v **Labourers' International Union of North America, Local 183**,
Responding Party

BEFORE: Danna Morrison, Vice-Chair

DECISION OF THE BOARD: August 28, 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") in which the applicant seeks to be accredited as the bargaining agent of employers of certain employees engaged in the on-site construction of all types of apartment buildings and their amenities for whom the responding party holds bargaining rights in Ontario Labour Relations Board Area Nos. 7, 9, 10, 11, 12, 27, and the District of Muskoka in Board Area 18.

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 requirements 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 decisions dated July 24, 2024 and August 2, 2024, 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 employer 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 five publications utilized by construction industry contractors 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 July 24, 2024 decision, the Board set an Employer Filing Date of August 23, 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 along with the required Schedule "A" to the Form A-94. The Board received such materials from six employers by the Employer Filing Date. No employer objected to the application. All 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 on the materials filed with the Board.

9. 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.

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

11. 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.

12. The "double majority" requirement the applicant 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.

13. No party has raised an objection to the proposed bargaining unit described in the Board's decision dated July 24, 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 employees for whom Labourers' International Union of North America, Local 183 (the "Union") holds bargaining rights engaged in the on-site construction of all types of apartment buildings only and their amenities, up to the takeover of the said

construction project or part thereof by maintenance and management employees of the Employer or maintenance and management employees of some other employer in OLRB Areas Nos. 7, 9, 10, 11, 12, 27 and the District of Muskoka.

For purposes of clarity, it is 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 Formwork Council of Ontario.
- (b) Collective Agreement between the Residential Low-Rise Forming Contractors Association and the Responding Party.
- (c) Collective Agreement between the Ontario Concrete & Drain Contractors Association and the Responding Party.
- (d) Collective Agreement between the Toronto Residential Construction Labour Bureau and the Responding Party.
- (e) Collective Agreement between the Residential Framing Contractors Association of Metropolitan Toronto and Vicinity and the Responding Party.
- (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 the Responding Party.

- (h) Collective Agreements between the Building Restorations and Associated Work Contractors and the Responding Party.
- (i) Collective Agreement between the Masonry Contractors Association of Toronto Inc. and Masonry Council of Union, Toronto & Vicinity.
- (j) Collective Agreements between various plumbing contractors and the Responding Party.
- (k) Collective Agreements between various fencing contractors and the Responding Party.
- (l) Collective Agreement between the Residential Tile Contractors Association and the Union.
- (m) Collective Agreement between the Residential Floor Levelling Association and the Union.
- (n) Collective Agreement between the Durham Residential Construction Labour Bureau and the Responding Party.

14. 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.

15. 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 6 employers:

Schedule "E"

Dermil Limited

Fusioncorp Developments

Kaitlin Corporation

Multiplex Construction Canada Limited

Skygrid Construction Inc.

Tribute Communities Inc.

16. The applicant filed documentary evidence establishing that it represents all six of the 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.

17. Five of the 6 employers filed an Employer Filing in 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 (one of the employers that filed a Form A-94 listed only employees working outside the geographic scope of the bargaining unit sought). The total number of employees on the five Employer Filings is 69. All five 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 applicant. The employers represented by the applicant employed 69 of 69 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.

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 13, above. That is, the applicant 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.

19. Pursuant to section 136(2) of the Act, the Board hereby accredits the applicant as the exclusive bargaining agent of employers in the unit of employer set out in paragraph 13 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 June 27, 2024, the date this application was made, obtain bargaining rights through certification or voluntary recognition in the following bargaining unit:

all employers of employees for whom Labourers' International Union of North America, Local 183 (the "Union") holds bargaining rights engaged in the on-site construction of all types of apartment buildings only and their amenities, up to the takeover of the said construction project or part thereof by maintenance and management employees of the Employer or maintenance and management employees of some other employer in OLRB Areas Nos. 7, 9, 10, 11, 12, 27 and the District of Muskoka.

For purposes of clarity, it is 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 Formwork Council of Ontario.
- (b) Collective Agreement between the Residential Low-Rise Forming Contractors Association and the Responding Party.
- (c) Collective Agreement between the Ontario Concrete & Drain Contractors Association and the Responding Party.

- (d) Collective Agreement between the Toronto Residential Construction Labour Bureau and the Responding Party.
- (e) Collective Agreement between the Residential Framing Contractors Association of Metropolitan Toronto and Vicinity and the Responding Party.
- (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 the Responding Party.
- (h) Collective Agreements between the Building Restorations and Associated Work Contractors and the Responding Party.
- (i) Collective Agreement between the Masonry Contractors Association of Toronto Inc. and Masonry Council of Union, Toronto & Vicinity.
- (j) Collective Agreements between various plumbing contractors and the Responding Party.
- (k) Collective Agreements between various fencing contractors and the Responding Party.
- (l) Collective Agreement between the Residential Tile Contractors Association and the Union.
- (m) Collective Agreement between the Residential Floor Levelling Association and the Union.
- (n) Collective Agreement between the Durham Residential Construction Labour Bureau and the Responding Party.

20. 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. 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 applicant 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 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.

21. The applicant was previously accredited to represent apartment building builders employing members of the responding party in Ontario Labour Relations Board Area No. 8 and in the County of Simcoe in Ontario Labour Relations Board Area 18 in *Metropolitan Toronto Apartment Builders Association*, [2001] O.L.R.D. No. 220 (January 22, 2001). The certificate of accreditation should include both those areas and the areas encompassed by the current application.

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

all employers of employees for whom Labourers' International Union of North America, Local 183 (the "Union") holds bargaining rights engaged in the on-site construction of all types of apartment buildings only and their amenities, up to the takeover of the said

construction project or part thereof by maintenance and management employees of the Employer or maintenance and management employees of some other employer in OLRB Areas Nos. 7, 8, 9, 10, 11, 12, 18 and 27.

For purposes of clarity, it is 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 Formwork Council of Ontario.
- (b) Collective Agreement between the Residential Low-Rise Forming Contractors Association and the Responding Party.
- (c) Collective Agreement between the Ontario Concrete & Drain Contractors Association and the Responding Party.
- (d) Collective Agreement between the Toronto Residential Construction Labour Bureau and the Responding Party.
- (e) Collective Agreement between the Residential Framing Contractors Association of Metropolitan Toronto and Vicinity and the Responding Party.
- (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 the Responding Party.

- (h) Collective Agreements between the Building Restorations and Associated Work Contractors and the Responding Party.
- (i) Collective Agreement between the Masonry Contractors Association of Toronto Inc. and Masonry Council of Union, Toronto & Vicinity.
- (j) Collective Agreements between various plumbing contractors and the Responding Party.
- (k) Collective Agreements between various fencing contractors and the Responding Party.
- (l) Collective Agreement between the Residential Tile Contractors Association and the Union.
- (m) Collective Agreement between the Residential Floor Levelling Association and the Union.
- (n) Collective Agreement between the Durham Residential Construction Labour Bureau and the Responding Party.

23. 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 the Schedule "E", for whatever reason.

24. A certificate of accreditation shall issue.

"Danna Morrison"
for the Board