



ONTARIO LABOUR RELATIONS BOARD

OLRB Case No: **0948-22-R**

The Electrical Power Systems Construction Association, Applicant
v Operative Plasterers' and Cement Masons' International Association of
the United States and Canada, Local 124, Responding Party

BEFORE: Jack J. Slaughter, Vice-Chair

DECISION OF THE BOARD: November 24, 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 certain employers who have a bargaining relationship with the responding party.
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 September 22, 2022, the Board directed the applicant to provide notice to all the employers the responding party had listed in its response and to any other employers the applicant believed may be affected by this application. 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: The Daily Commercial News which is directed at construction industry contractors as well as in four newspapers distributed in the geographic area affected by this application.

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 a reasonable notice to any person or employer that may be affected by this proceeding.

7. In the September 22, 2022 decision, the Board set an Employer Filing Date of October 31, 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 did not receive any such materials from any employer, either by or since the Employer Filing Date.

8. 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.

9. In order to obtain accreditation, the applicant must establish it meets the conditions prescribed in 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).

10. 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.

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

136(1) Upon 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 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.

12. No party has taken objection to the proposed bargaining unit described in the Board's decision of September 22, 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:

all employers of employees for whom Operative Plasterers' and Cement Masons' International Association of the United States and Canada, Local 124 has bargaining rights in the Electrical Power Sector in the Province of Ontario.

For Clarity: Construction work in the Electrical Power Sector consists of all construction work on Ontario Power Generation Inc. (OPGI), Bruce Power LP and Hydro One property for the bulk power system, save and except the building of commercial type office facilities at urban locations remote from operating facilities. It comprises generating stations; hydraulic works; heavy water facilities; transmission lines (voltages over 50 kV); transmission stations, microwave and repeater stations.

13. 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.

14. Based on the parties' representations and the materials filed with the Board, the Board is satisfied that the final list of employers in the unit is comprised of the following two employers:

Aecon Industrial, a Division of Aecon Group Inc.

Dewar Industrial Services Inc.

15. The applicant filed documentary evidence establishing that it represents both of these employers. 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 applicant has represented that there were approximately two employees of employers in the unit described in this application for the weekly pay period immediately preceding the date of the application. Neither of the employers filed an Employer Filing Form (Form A-94). The responding party states there were approximately four members of the responding party working the areas and sectors described in the unit of employers claimed in the application.

17. Whether the total number of employees is two or four, the employers represented by the applicant employed all of the employees at work for the employers listed in the application 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 12

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 the employers in the unit of employers set out in paragraph 12 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 July 29, 2022, 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 Operative Plasterers' and Cement Masons' International Association of the United States and Canada, Local 124 has bargaining rights in the Electrical Power Sector in the Province of Ontario.

For Clarity: Construction work in the Electrical Power Sector consists of all construction work on Ontario Power Generation Inc. (OPGI), Bruce Power LP and Hydro One property for the bulk power system, save and except the building of commercial type office facilities at urban locations remote from operating facilities. It comprises generating stations; hydraulic works; heavy water facilities; transmission lines (voltages over 50 kV); transmission stations, microwave and repeater stations.

20. 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 application, for whatever reason.

21. A certificate of accreditation shall issue to the applicant for the following bargaining unit:

all employers of employees for whom Operative Plasterers' and Cement Masons' International Association of the United States and Canada, Local 124

has bargaining rights in the Electrical Power Sector in the Province of Ontario.

For Clarity: Construction work in the Electrical Power Sector consists of all construction work on Ontario Power Generation Inc. (OPGI), Bruce Power LP and Hydro One property for the bulk power system, save and except the building of commercial type office facilities at urban locations remote from operating facilities. It comprises generating stations; hydraulic works; heavy water facilities; transmission lines (voltages over 50 kV); transmission stations, microwave and repeater stations.

“Jack J. Slaughter”
for the Board