Ontario

ONTARIO LABOUR RELATIONS BOARD

OLRB Case No: **1899-24-R**

Residential Hardwood and Carpet Association, Applicant v Labourers' International Union of North America, Local 183, Responding Party

BEFORE: Scott G. Thompson, Vice-Chair

APPEARANCES: Christopher Fiore and Amanda Finelli appearing for the applicant; Tracy Tanentzap appearing for the responding party

DECISION OF THE BOARD: July 23, 2025

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 applicant, the Residential Hardwood and Carpet Association (the "Applicant"), seeks to be accredited as the bargaining agent of employers of employees, including pieceworkers and their helpers/learners, engaged in the removal, installation, service, and repair of hardwood, carpet, laminate, vinyl, resilient flooring, and all related floor coverings, and all work incidental to or necessary for the performance of such work, for whom the responding party has bargaining rights, in all sectors of the construction industry, save and except the industrial, commercial and institutional sector, working in Ontario Labour Relations Board Area Nos. 7, 8, 9, 10, 11, 12, 18, 27, and 29.

2. The responding party, the Labourers International Union of North America, Local 183, (the "Responding Party"), filed a timely response.

3. The Board received interventions from the United Brotherhood of Carpenters and Joiners of America, Local 27 (the "Carpenters") and

the Resilient Flooring Contractors Association of Ontario (the "RFCAO"). Both the Applicant and the Responding Party objected and took the position that the interveners did not have the legal status to intervene. The Board in *Residential Hardwood and Carpet Association v Labourers' International Union of North America*, 2025 CanLII 41080 (ON LRB) dismissed those interventions (the "Third Decision").

The Status of the Applicant and Responding Party

4. In addition, the Board in that Third Decision determined that an in-person hearing was required to address a number of concerns the Board had with the accreditation application. One of those concerns was identified as follows:

> 35. The Board needs to be satisfied that the Applicant satisfies the definitions of an 'accredited employers association' under section 1(1) of the Act and the definition of an 'employers' organization' under section 126 of the Act. See *Independent Plumbing & Heating Contractors Association*, 1986 CanLII 1667 (ON LRB). Although the Applicant has filed its By-laws which state that they were enacted on August 7, 2024, it has not filed its incorporation documents, so it is unclear the nature of the Applicant's existence when the Association Collective Agreement was executed on May 24, 2024.

5. In response to this concern the Applicant filed its Certificate and Articles of Incorporation and Bylaws which showed the Applicant was incorporated on June 3, 2024. At the in-person hearing that took place on May 5, 2025, the Board was satisfied that at the time the Association Collective Agreement was executed on May 24, 2024, the signatories were acting on behalf of the Applicant as an unincorporated employers' organization which subsequently became incorporated.

6. Based on the materials filed in support of the application and the representations of the parties the Board finds that the Applicant 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 the Responding Party is a trade union within the meaning of sections 1(1) and 126 of the Act.

Accreditation Notice

7. In *Residential Hardwood and Carpet Association v LIUNA 183*, 2024 CanLII 135049 (ON LRB) (the "Initial Decision"), the Board directed the Applicant to provide notice of this application 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 the Applicant to have published a copy of the notice in two publications utilized by construction industry contractors that service the affected geographic areas and to send a copy of the Board's Initial 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 Applicant and the Responding Party.

8. By way of correspondence dated July 22, 2025, the Applicant 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.

9. 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.

Accreditation Filings

10. In its Initial Decision, the Board set an Employer Filing Date of January 24, 2025, 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 nine (9) Employer Filings by the Employer Filing Date. No employer objected to the application. All employers indicated that the Applicant was entitled to bargain on their behalf.

11. One of the concerns raised by the Board in its Third Decision was the adequacy of some of the Employer Filings since some of the Lists of Employees filed by the employers failed to identity the job location or sector adequately and some failed to provide the names of the employees they are seeking to identify. In accordance with the Board's direction those employers who filed Employer Filings by the Employer Filing Date filed amended Lists of Employees to address these issues.

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

Accreditation Requirements

13. 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.

14. 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).

15. 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.

16. 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.
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> 136. (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),
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> 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

17. 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."

18. After the application was filed the Applicant by letter dated November 11, 2024, notified the Board that the parties had agreed to an amended bargaining unit description. The bargaining unit description to which the parties have agreed is:

> All Employers of employees, including pieceworkers and their helpers/learners, engaged in the removal, installation, service, and repair of hardwood, carpet, laminate, vinyl, resilient flooring, and all related floor coverings, and all work incidental to or necessary for the performance of such work, for whom the Labourers' International Union of North America, Local 183 has bargaining rights, in all sectors of the construction industry, save and except the industrial, commercial and institutional sector, working in OLRB Geographic Areas 7, 8, 9, 10, 11, 12, 18, 27, and 29.
>
> 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) The collective agreement between the Toronto Residential Construction Labour Bureau and the Union.

(b) The collective agreement between the Durham Residential Construction Labour Bureau and the Union.

(c) The collective agreement between the Metropolitan Toronto Apartment Builders Association and the Union.

(d) The collective agreement between the Residential Framing Contractors' Association of Metropolitan Toronto & Vicinity Inc. and the Union.

(e) The collective Agreement between the Ontario Formwork Association and the Formwork Council of Ontario.

(f) The collective agreement between the Residential Tile Contractors Association, and the Union.

(g) The collective agreement between the Residential Floor Leveling Association and the Union. (the "Amended Bargaining Unit")

19. The Board in its Third Decision raised some concerns with respect to the Amended Bargaining unit as follows:

> 36. The Amended Bargaining Unit does not match the bargaining unit in the Association Collective Agreement, or the other collective agreements filed with the application. The Broadway Hardwood collective agreement expired on April 30, 2019, and the Frontier Flooring collective agreement expired on April 30, 2022, and there is no evidence of their renewal or explanation of what collective agreement has been governing their operations. The Board is prepared to hear evidence in support of the parties' request for the Amended Bargaining Unit, but the Board needs to be satisfied that there is an evidentiary basis for the requested amendment. See *Residential Low Rise Forming Contractors Association of Metropolitan Toronto and Vicinity*, 1995 CanLII 10039 (ON LRB); *Heavy Construction*

> *Association of Windsor*, 2013 CanLII 23908 (ON LRB) and *Greater Toronto Sewer and Watermain Contractors v The Oshawa Area Signatory Contractors Association, supra*.

20. In response to this concern the Applicant filed additional collective agreements with Darmaga Hardwood Flooring and MHFC Inc. o/a Milton Flooring Gallery both of which expired April 30, 2022, as well as the Interim and Final unreported interest arbitration decisions concerning those employers, which additional materials addressed the Board's concern about the collective agreement gap for the round of bargaining expiring on April 30, 2025.

21. At the hearing on May 5, 2025, the parties were able to satisfy the Board that the Amended Bargaining Unit reflected the actual practice under the various collective agreements the Responding Party had with employers falling within the Amended Bargaining Unit description. For example, all but one of the individual collective agreements filed by the Applicant, as well as the Association Collective Agreement, contain provisions similar to Articles 22.04 and 24.01 which provide as follows:

> 22.04 The Union agrees that it will not enter into any collective agreement regarding the installation or removal of hardwood, laminate or other floor coverings with any company or employer that do not provide for payments to Employer Association (to be named) in the same amounts as agreed to in this Agreement or that includes financial terms or conditions which are more advantageous than those offered to the Company, and if it does, then those terms and conditions will be offered to the Company.
>
> 24.01 After being awarded a project, but prior to commencing *work,* the Company agrees to advise the Union of each project upon which persons working under this Collective Agreement will be installing carpet, hardwood/laminate or related material, including the Project site name and location. In any *event,* notice of project starts shall be provided prior to work being commenced.

22. In addition, all the individual collective agreements filed by the Applicant, as well as the Association Collective Agreement, contain separate rate schedules for carpet installers on the one hand and hardwood and laminate installers on the other hand.

23. In support of these collective agreement provisions, many of the Employee Lists filed by the employers identified workers as either carpet installers or hardwood installers.

24. Furthermore, the Association Collective Agreement contains the following provision:

> 25.02 It is the intention of the parties that this agreement shall be the industry standard agreement for the removal, installation, service and repair of carpet, hardwood, laminate and related floor coverings.
>
> In collective bargaining in 2025 the Union will propose and seek to enforce through any available means that any independent contractor performing work covered by this Agreement shall sign this Agreement or an independent agreement that which contains the same terms as this Agreement. For clarity in 2025 and following the Union will not enter into any collective agreement which contains any terms different from this agreement.

25. Finally, the Responding Party confirmed at the hearing on May 5, 2025, that its members historically performed work with both carpet as well as hardwood and laminate under its collective agreements with the employers now represented by the Association and the issue of amending the bargaining unit description had never arisen until now. Although the parties had agreed to amend the bargaining unit description when negotiating the Association Collective Agreement that amendment was inadvertently not included in the final draft Association Collective Agreement expiring April 30, 2025. That issue has now been addressed in the renewal Memorandum of Agreement dated April 28, 2025, which amends Article 2.01 of the Association Collective Agreement to provide as follows:

> 2.01 The Company recognizes the Union as the sole and exclusive bargaining agent for all construction employees, including pieceworkers and their helpers/learners, engaged in the removal, installation, service, and repair of hardwood, carpet, laminate, vinyl, resilient flooring, and all related floor coverings, and all work incidental to or necessary for the performance of such work, working in OLRB Geographic Areas 7, 8, 9, 10, 11, 12, 18, 27, and 29, save and except persons performing work covered by a subsisting collective agreement, and except

non-working foremen, those persons above the rank of non-working foremen, office and clerical staff.

26. Based on this information the Board is satisfied that the Amended Bargaining Unit actually reflects the work that historically has been performed by workers represented by the Responding Party and employed by employers falling within the Amended Bargaining Unit description.

27. Therefore, having regard to section 135 of the Act, the agreement of the parties and the evidence before the Board, the Board has determined that the Amended Bargaining Unit is appropriate for collective bargaining.

Applicant's Members and Support

28. 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.

29. 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 nine employers:

Schedule "E"

1. Advance Hardwood
2. Broadway Hardwood Flooring Ltd.
3. Cardinal Floor Coverings Inc.
4. Darmaga Hardwood Flooring Limited
5. Frontier Flooring Inc.
6. Mega City Tiling
7. 1115658 Ontario Ltd. o/a The Floor Shop
8. MHFC Inc. o/a Milton Flooring Gallery
9. Woodstone U&P Flooring Ltd.

30. The Applicant filed documentary evidence establishing that it represents all nine of the 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 Amended 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.

31. All nine of the employers 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 nine Employer Filings as having performed work within the geographic scope of this application is 124. All nine 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 124 of 124 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.

32. 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 Amended Bargaining Unit. 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.

Accreditation Certificate to Issue

33. Pursuant to section 136(2) of the Act, the Board accredits the Applicant as the exclusive bargaining agent of employers in the unit of employers set out in paragraph 18 above (the "Amended Bargaining Unit") 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 November 1, 2024, the date this application was made, obtain bargaining rights through certification or voluntary recognition in the following bargaining unit:

all Employers of employees, including pieceworkers and their helpers/learners, engaged in the removal, installation, service, and repair of hardwood, carpet, laminate, vinyl, resilient flooring, and all related floor coverings, and all work incidental to or necessary for the performance of such work, for whom the Labourers' International Union of North America, Local 183 has bargaining rights, in all sectors of the construction industry, save and except the industrial, commercial and institutional sector, working in OLRB Geographic Areas 7, 8, 9, 10, 11, 12, 18, 27, and 29.

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) The collective agreement between the Toronto Residential Construction Labour Bureau and the Union.

(b) The collective agreement between the Durham Residential Construction Labour Bureau and the Union.

(c) The collective agreement between the Metropolitan Toronto Apartment Builders Association and the Union.

(d) The collective agreement between the Residential Framing Contractors' Association of Metropolitan Toronto & Vicinity Inc. and the Union.

(e) The collective Agreement between the Ontario Formwork Association and the Formwork Council of Ontario.

(f) The collective agreement between the Residential Tile Contractors Association, and the Union.

(g) The collective agreement between the Residential Floor Leveling Association and the Union. (the "Amended Bargaining Unit")

34. 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 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.

35. A certificate of accreditation shall issue.

"Scott G. Thompson"
for the Board