



ONTARIO LABOUR RELATIONS BOARD

OLRB Case No: **0487-21-R**

Greater Toronto Sewer and Watermain Contractors Association,
Applicant v International Union of Operating Engineers, Local 793,
Responding Party v The Oshawa Area Signatory Contractors Association,
Intervenor

BEFORE: Jack J. Slaughter, Vice-Chair

DECISION OF THE BOARD: April 20, 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 sewers and watermains employers in a manner that expands the geographic scope of its existing accreditation certification with the International Union of Operating Engineers, Local 793 ("Local 793" or the "Union").
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 January 14, 2022, 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 employers 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 four publications utilized by contractors engaged in sewers and watermain work 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 January 14, 2022 decision, the Board set an Employer Filing Date of February 28, 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 received such materials from 22 employers by the Employer Filing Date. Only one employer objected to the application. All but one of the 22 employers indicated that the applicant was entitled to bargain on their behalf.

8. The objecting employer is Coco Paving Inc. ("Coco"). By decision dated March 9, 2022, the Board directed the parties to file submissions with respect to Coco's objection.

9. Both the applicant and Local 793 filed detailed submissions dated March 25, 2022. In responsive submissions dated April 8, 2022, Coco takes no issue with any of the findings made by the Board to date. Coco does not seek an exclusion from the applicant's proposed bargaining unit. Coco simply makes it clear that its position is effectively a "no vote" and that it does not support this application.

10. Accordingly, the Board will do as Coco has requested and treat its submissions as a "no vote". However, Coco's objection is not numerically significant to the applicant's entitlement to accreditation in this matter.

11. 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 upon the materials filed with the Board.

12. 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:

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.

13. In order to obtain accreditation, the applicant must establish 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).

14. Section 136(3) of the Act provides:

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.

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

(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.

16. No party has taken objection to the proposed bargaining unit described in the Board's decision dated January 14, 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:

1. all employers of employees engaged in the operation of cranes, shovels, bulldozers and similar equipment and those primarily engaged in the repair and maintenance of same, for whom the International Union of Operating Engineers, Local 793 holds bargaining rights, performing the work identified in paragraph 2 below, in Board Area Nos. 9, 10, 11, that part of Board Area 12 west of the Trent Severn Waterway, and the District Municipality of Muskoka (Board Area 18).
2. The work covered by this accreditation certificate includes all work in the sewers and watermains sector on: (a) public property, (b) private property more than three feet from any building where the site is in excess of 1.5 hectares in size, but excludes work from the individual lot property line to the interior of new single family residential detached or semi-detached houses which are not townhouses or residential highrises (condominiums or rentals), (c) private property that is ultimately assumed as an easement, right-of-way or road allowance by the federal, provincial or municipal government or any other governmental authority, and (d) an easement, right-of-way, private roadway or road allowance on residential end use private property sites greater than 1.5 hectares in size.

3. The bargaining unit excludes employers bound by and performing work under any of the following collective agreements in accordance with past or existing practices as at the date hereof:
 - a. Schedule "A" to the Operating Engineers Provincial Agreement being the schedule between the Crane Rental Association of Ontario and the Ottawa Crane Rental Association and the International Union of Operating Engineers, Local 793 ("Local 793");
 - b. Schedule "B" to the Operating Engineers Provincial Agreement being the schedule between the Ontario Association of Foundation Specialists and Local 793;
 - c. Schedule "C" to the Operating Engineers Provincial Agreement being the schedule between the Ontario Erectors Association and Local 793;
 - d. Schedule "D" to the Operating Engineers Provincial Agreement being the schedule between the Associated Earth Movers of Ontario and Local 793;
 - e. Collective Agreement between Local 793 and the Toronto and Area Road Builders' Association;
 - f. Collective Agreement between Local 793 and the Utility Contractors Association of Ontario;
 - g. Collective Agreement between the Ontario Allied Construction Trades Council and the Electrical Power Systems Construction Association;
 - h. Operating Engineers Mainline Pipeline Agreement for Canada between Pipe Line

Contractors' Association of Canada and the International Union of Operating Engineers;

- i. Operating Engineers Distribution Pipeline Agreement for Canada between Pipe Line Contractors Association of Canada and International Union of Operating Engineers; and
- j. Collective Agreement between the Ontario Formwork Association and the Formwork Council of Ontario.

17. 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.

18. 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 22 employers:

Schedule "E"

Aquatech Dewatering Company
Armagh Contractors Limited
Atlas Dewatering Corporation
CDC Contracting Inc.
Coco Paving Inc.
Condrain Company 1983 Limited
Dolente Concrete & Drain Company Limited
Earth Boring Co. Limited
EBC Inc.
Fernview Construction Limited
Great North Drain Ltd.
Groundworks Construction Company Ltd.
Hard Rock Sewer and Watermain Ltd.
Kapp Infrastructure Inc.
Mar-King Construction Company Limited
Memme Excavation Company Limited

New-Alliance Ltd.
North Rock Group Ltd.
Pilen Construction of Canada Limited
Primrose Contracting (Ontario) Inc.
TACC Construction Ltd.
Trillium Infrastructure Ltd.

19. The applicant filed documentary evidence establishing that it represents 21 of the 22 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.

20. Seventeen of the 22 employers filed an Employer Filing in Form A-94 indicating they had employees on their payroll for the weekly pay period immediately preceding the date of the application. The total number of employees on the 17 employer filings is 132. Sixteen of the 17 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 125 of the 132 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.

21. 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 16 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.

22. 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 16 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 4, 2021, the date this application was made, obtain bargaining rights through certification or voluntary recognition in the following bargaining unit:

1. all employers of employees engaged in the operation of cranes, shovels, bulldozers and similar equipment and those primarily engaged in the repair and maintenance of same, for whom the International Union of Operating Engineers, Local 793 holds bargaining rights, performing the work identified in paragraph 2 below, in Board Area Nos. 9, 10, 11, that part of Board Area 12 west of the Trent Severn Waterway, and the District Municipality of Muskoka (Board Area 18).
2. The work covered by this accreditation certificate includes all work in the sewers and watermains sector on: (a) public property, (b) private property more than three feet from any building where the site is in excess of 1.5 hectares in size, but excludes work from the individual lot property line to the interior of new single family residential detached or semi-detached houses which are not townhouses or residential highrises (condominiums or rentals), (c) private property that is ultimately assumed as an easement, right-of-way or road allowance by the federal, provincial or municipal government or any other governmental authority, and (d) an easement, right-of-way, private roadway or road allowance on residential end use private property sites greater than 1.5 hectares in size.
3. The bargaining unit excludes employers bound by and performing work under any of the following collective agreements in accordance with past or existing practices as at the date hereof:

- a. Schedule "A" to the Operating Engineers Provincial Agreement being the schedule between the Crane Rental Association of Ontario and the Ottawa Crane Rental Association and the International Union of Operating Engineers, Local 793 ("Local 793");
- b. Schedule "B" to the Operating Engineers Provincial Agreement being the schedule between the Ontario Association of Foundation Specialists and Local 793;
- c. Schedule "C" to the Operating Engineers Provincial Agreement being the schedule between the Ontario Erectors Association and Local 793;
- d. Schedule "D" to the Operating Engineers Provincial Agreement being the schedule between the Associated Earth Movers of Ontario and Local 793;
- e. Collective Agreement between Local 793 and the Toronto and Area Road Builders' Association;
- f. Collective Agreement between Local 793 and the Utility Contractors Association of Ontario;
- g. Collective Agreement between the Ontario Allied Construction Trades Council and the Electrical Power Systems Construction Association;
- h. Operating Engineers Mainline Pipeline Agreement for Canada between Pipe Line Contractors' Association of Canada and the International Union of Operating Engineers;
- i. Operating Engineers Distribution Pipeline Agreement for Canada between Pipe Line

Contractors Association of Canada and
International Union of Operating Engineers;
and

- j. Collective Agreement between the Ontario Formwork Association and the Formwork Council of Ontario.

23. 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 further to the guidelines established by the Board in its decision 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) (January 24, 2020) where the Board said:

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 requests of decisions 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.

24. The applicant was previously accredited to represent sewers and watermains employers employing operating engineers in Ontario Labour Relations Board Area No. 8 and the County of Simcoe in *Metropolitan Toronto Sewer and Watermain Contractors Association*, [1989] OLRB Rep. December 1226. The certificate of accreditation

should include both those areas and the areas encompassed by the current application.

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

1. all employers of employees engaged in the operation of cranes, shovels, bulldozers and similar equipment and those primarily engaged in the repair and maintenance of same, for whom the International Union of Operating Engineers, Local 793 holds bargaining rights, performing the work identified in paragraph 2 below, in the City of Toronto, the Regional Municipalities of Peel and York, the Towns of Oakville and Halton Hills and that portion of the Town of Milton within the geographic Townships of Esquesing and Trafalgar, and the Town of Ajax and the City of Pickering in the Regional Municipality of Durham (Board Area 8); the Regional Municipality of Durham (except for the Town of Ajax and the City of Pickering), the geographic Township of Cavan in the County of Peterborough and the geographic Township of Manvers in the City of Kawartha Lakes (Board Area 9); the Town of Cobourg, the Municipality of Port Hope, and the geographic Townships of Hope, Hamilton, Haldimand and Alnwick in the County of Northumberland (Board Area 10); the County of Peterborough (except for the geographic Township of Cavan), the City of Kawartha Lakes (except for the geographic Township of Manvers) and the County of Haliburton (Board Area 11); that part of Board Area 12 west of the Trent Severn Waterway; and the County of Simcoe and the District Municipality of Muskoka (Board Area 18).
2. The work covered by this accreditation certificate includes all work in the sewers and watermains sector on: (a) public property, (b) private property more than three feet from any building where the site is in excess of 1.5 hectares in size, but excludes work from the individual lot property line to the interior of new single family residential detached or

semi-detached houses which are not townhouses or residential highrises (condominiums or rentals), (c) private property that is ultimately assumed as an easement, right-of-way or road allowance by the federal, provincial or municipal government or any other governmental authority, and (d) an easement, right-of-way, private roadway or road allowance on residential end use private property sites greater than 1.5 hectares in size.

3. The bargaining unit excludes employers bound by and performing work under any of the following collective agreements in accordance with past or existing practices as at the date hereof:
 - a. Schedule "A" to the Operating Engineers Provincial Agreement being the schedule between the Crane Rental Association of Ontario and the Ottawa Crane Rental Association and the International Union of Operating Engineers, Local 793 ("Local 793");
 - b. Schedule "B" to the Operating Engineers Provincial Agreement being the schedule between the Ontario Association of Foundation Specialists and Local 793;
 - c. Schedule "C" to the Operating Engineers Provincial Agreement being the schedule between the Ontario Erectors Association and Local 793;
 - d. Schedule "D" to the Operating Engineers Provincial Agreement being the schedule between the Associated Earth Movers of Ontario and Local 793;
 - e. Collective Agreement between Local 793 and the Toronto and Area Road Builders' Association;

- f. Collective Agreement between Local 793 and the Utility Contractors Association of Ontario;
- g. Collective Agreement between the Ontario Allied Construction Trades Council and the Electrical Power Systems Construction Association;
- h. Operating Engineers Mainline Pipeline Agreement for Canada between Pipe Line Contractors' Association of Canada and the International Union of Operating Engineers;
- i. Operating Engineers Distribution Pipeline Agreement for Canada between Pipe Line Contractors Association of Canada and International Union of Operating Engineers; and
- j. Collective Agreement between the Ontario Formwork Association and the Formwork Council of Ontario.

26. 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 Schedule "E", for whatever reason.

27. A certificate of accreditation shall issue.

"Jack J. Slaughter"
for the Board