



## ONTARIO LABOUR RELATIONS BOARD

OLRB Case No: **1735-22-R**

**The Greater Hamilton & Niagara Construction Association,**  
Applicant v International Union of Operating Engineers, Local 793,  
Responding Party

**BEFORE:** Danna Morrison, Vice-Chair

**DECISION OF THE BOARD:** February 15, 2023

1. This is an application for accreditation under section 134 of the *Labour Relations Act, 1995, S.O. 1995, c.1*, as amended (the "Act") that was filed on November 7, 2022. The applicant, The Greater Hamilton & Niagara Construction Association, seeks to be accredited as the bargaining agent for certain employers which have a bargaining relationship with the responding party, International Union of Operating Engineers, Local 793.

2. The provisions of the Act applicable to the accreditation process are set out in sections 134 through 136 and provide as follows:

**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.

**135.** (1) Upon an application for accreditation, the Board shall determine the unit of employers that is appropriate for collective bargaining in a particular geographic area and

sector, but the Board 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.

(2) The unit of employers shall comprise all employers as defined in section 126 in the geographic area and sector determined by the Board to be appropriate.

**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.

(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.

(4) Where the Board is of the opinion that appropriate authority has not been vested in the employers' organization, the Board may postpone disposition of the application to enable employers represented by the organization to vest the additional or other authority in the organization that the Board considers necessary.

(5) The Board shall not accredit any employers' organization if any trade union or council of trade unions has participated in its formation or administration or has contributed financial or other support to it or if it discriminates against any person because of any ground of discrimination prohibited by the *Human Rights Code*, or the *Canadian Charter of Rights and Freedoms*.

3. On the basis of the materials filed with the Board, 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 is a properly constituted organization for the purpose of section 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.

4. In its November 16, 2022 decision, the Board directed the applicant to deliver to all employers identified by the applicant or responding party in their materials a copy of the Board's November 16, 2022 decision (which included the agreed upon Notice to Employers) together with certain blank forms. The Board further directed the applicant to publish the Notice to Employers as an advertisement in each of the following publications: Daily Commercial News; The Hamilton Spectator; St. Catharines Standard; and The Niagara Falls Review once during the week ending November 30, 2022. By way of correspondence dated November 28, 2022, the applicant confirmed that the requisite materials had been delivered to each of the identified employers and that an advertisement had been published in the above-named publications on November 25, 2022.

5. 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.

6. In its November 16, 2022 decision, the Board set an Employer Filing Date of December 30, 2022 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" thereto. The Board received such materials from 34 employers by the Employer Filing Date set by the Board.

7. On December 30, 2022, the Board received correspondence from another employer identified by the parties in their materials as having performed work in bargaining unit in the previous year: Alfidome Construction ("Alfidome"). In that correspondence, Alfidome requested an extension to file its Employer Filing (Form A-94). The applicant and the responding party objected to any extension being granted. Alfidome filed its Employer Filing and Schedule "A" on January 6, 2023, which was only four business days after the deadline set in the Board's November 16, 2022 decision. I am satisfied that it is appropriate to permit the late-filing of the Form A-94 filed by Alfidome Construction on January 6, 2023. In any event, the inclusion of Alfidome's information does not change the outcome of this application.

8. Given the Board's acceptance of the late-filed Employer Filing from Alfidome, there were 35 employers in total who filed the requisite materials with the Board. All but one of those 35 employers are represented by the applicant (Alfidome Construction is not represented by the applicant). None of the employers who made filings contradicted any statement in the application, nor was any objection to the application received. In these circumstances, 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.

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.

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

11. This "double majority" requirement is set out in sections 136(1) and 136(2) of the Act.

12. The Board did not determine the appropriate bargaining unit in the November 16, 2022 decision. It did, however, note the proposed bargaining unit in that decision, and no party (including any employer which made a filing) has made any submissions in response to the question of whether the bargaining unit was appropriate. Since no party has raised any objection to the proposed bargaining unit, based on the material and representations filed by the applicant and the responding party, the Board is satisfied that the bargaining unit for which the applicant has applied is an appropriate unit for accredited collective bargaining.

13. That bargaining unit is as follows:

all employers of employees for whom the International Union of Operating Engineers, Local 793 has bargaining rights in the sewer and watermain, roads, and heavy engineering sectors of the construction industry in the Regional Municipality of Niagara and Haldimand County (OLRB Board Area 5), and in the City of Hamilton, the City of Burlington, that portion of the geographic Township of Beverly annexed by North Dumfries Township and that portion of the Town of Milton within the geographic townships of Nassagaweya and Nelson (OLRB Board Area 26), save and except employers bound by and performing work under any of the following Collective Agreements:

- (a) Schedules A, B, C and D of the Provincial Collective Agreement between the Operating

Engineers Employer and Employee Bargaining Agencies in accordance with local area practice;

- (b) Schedule H of the Provincial Collective Agreement between the Operating Engineers Employer and Employee Bargaining Agencies, but only insofar as it applies to contractors who have an established practice of applying Schedule H of the Provincial Collective Agreement and not the HAND Association of Sewer, Watermain and Road Contractors Collective Agreement as at November 1, 2022, and no other contractor;
- (c) The Mainline Pipeline Agreement, The Distribution Pipeline Agreement and the Pipeline Maintenance and Service Agreement for Canada, all between the Pipe Line Contractors Association of Canada and the International Brotherhood of Teamsters, International Union of Operating Engineers, Labourers International Union of North America and United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada;
- (d) Collective Agreement between the Ontario Formwork Association and the Formwork Council of Ontario; and
- (e) Collective Agreement between the Utility Contractors' Association of Ontario and the International Union of Operating Engineers, Local 793.

14. The applicant and responding party have agreed upon the composition of the list of employers defined by section 136(1)(a) of the Act. These are the employers who have been identified as, within one year before the date of the application, having employees in their employ for whom the responding party trade union had bargaining rights in the bargaining unit described above. This list is sometimes referred to as Schedule "E" to the application. The list contains the names of the following contractors:

- (1) 1573335 Ontario Ltd. o/a Charlton Group
- (2) 714794 Ontario Limited o/a LM Enterprises
- (3) 821694 Ontario Inc. o/a Battlefield Excavating

- (4) Accuworx Inc.
- (5) Alfidome Construction Niagara
- (6) Alfred Beam Excavating Limited
- (7) All Around Contracting Inc.
- (8) Ambler & Co. Inc.
- (9) Amico Infrastructure Inc.
- (10) Anthony's Excavating Central Inc.
- (11) Associated Paving Company Ltd.
- (12) Backwoods Excavating Inc.
- (13) Badger Daylighting Corp./LP
- (14) Baiocco Construction Corp.
- (15) Battlefield Bobcat Services
- (16) BEECH Infrastructure Group Ltd.
- (17) Belchior Contracting & Excavating Ltd.
- (18) Brennan Paving & Construction Ltd.
- (19) Cameron Trucking Limited
- (20) Capital Paving Inc.
- (21) Catalina Excavating Inc.
- (22) Centennial Construction and Contracting
- (23) Ciccarelli & Son Contracting Ltd.
- (24) Cona Contracting Inc.
- (25) ConDrain Company (1983) Limited
- (26) Deso Construction Limited
- (27) D'Orazio Infrastructure Group
- (28) Dufferin Construction Company, a division of CRH Canada Group Inc.
- (29) DVC Contracting
- (30) Eiffage GC Canda Inc.
- (31) Gear Equipment Inc.
- (32) GFL Environmental Inc. (Dynamic Industrial Services Inc.)
- (33) Green Infrastructure Partners Inc. (GIP)
- (34) Ground Breakers Contracting Ltd.
- (35) H.S. Cole Excavating
- (36) Howlett Development & Construction
- (37) In4structure Ltd.
- (38) JC Infrastructure Ltd.
- (39) Jerry's Excavating & Backhoe Services
- (40) Jim Mattice Co. Ltd.
- (41) Kada Group Inc.
- (42) Kapp Infrastructure Inc.
- (43) King Paving & Construction Ltd.
- (44) Lonestar Vacuum Inc.

- (45) Marbelle Group Inc.
- (46) Marrit Construction Inc.
- (47) MCL Concrete Ltd.
- (48) McNally Construction
- (49) Metric Contracting Services Corporation
- (50) Mountsberg Excavating Inc.
- (51) Murray Excavation & Demolition
- (52) Navacon Construction Inc.
- (53) Neil Montague Construction Limited
- (54) New-Alliance Ltd.
- (55) Nexterra Substructures Incorporated
- (56) Niacon Limited
- (57) Oakridge Group Inc.
- (58) Orin Enterprises Inc.
- (59) Peninsula Construction Incorporated
- (60) Peters Excavating Inc.
- (61) Pylon Paving (1996) Inc.
- (62) Rankin Construction Inc.
- (63) REW Earthworks Inc.
- (64) Sercon Construction
- (65) Sitemaster Equipment & Service Inc.
- (66) Sona Construction Limited
- (67) Steed and Evans Limited
- (68) Super Sucker Hydro Vac Inc.
- (69) TACC Construction Ltd.
- (70) TDI Site Services Inc.
- (71) Tectonic Infrastructure Inc.
- (72) Terracon Underground Ltd.
- (73) Varcon Construction Corporation
- (74) Walker Construction Limited
- (75) Westroc Construction Ltd.
- (76) Wm Groves Ltd.

15. The applicant has filed documentary evidence establishing that it represents 46 of the 76 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.

16. Of the 76 employers listed on Schedule "E", 35 have filed an Employer Filing (Form A-94) and 31 of those employers indicated that they had employees on their payroll for the weekly pay period immediately preceding the date of the application (4 of the employers who filed an Employer Filing did not have any employees on their payroll for the weekly pay period immediately preceding the date of application). The total number of employees listed on the Employer Filings (Form A-94) received by the Board is 325. All but one 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 316 of the 325 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.

17. 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 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.

18. 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 13 above and for all other employers whose employees the responding party may, after November 7, 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 the International Union of Operating Engineers, Local 793 has bargaining rights in the sewer and watermain, roads, and heavy engineering sectors of the construction industry in the

Regional Municipality of Niagara and Haldimand County (OLRB Board Area 5), and in the City of Hamilton, the City of Burlington, that portion of the geographic Township of Beverly annexed by North Dumfries Township and that portion of the Town of Milton within the geographic townships of Nassagaweya and Nelson (OLRB Board Area 26), save and except employers bound by and performing work under any of the following Collective Agreements:

- (a) Schedules A, B, C and D of the Provincial Collective Agreement between the Operating Engineers Employer and Employee Bargaining Agencies in accordance with local area practice;
- (b) Schedule H of the Provincial Collective Agreement between the Operating Engineers Employer and Employee Bargaining Agencies, but only insofar as it applies to contractors who have an established practice of applying Schedule H of the Provincial Collective Agreement and not the HAND Association of Sewer, Watermain and Road Contractors Collective Agreement as at November 1, 2022, and no other contractor;
- (c) The Mainline Pipeline Agreement, The Distribution Pipeline Agreement and the Pipeline Maintenance and Service Agreement for Canada, all between the Pipe Line Contractors Association of Canada and the International Brotherhood of Teamsters, International Union of Operating Engineers, Labourers International Union of North America and United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada;
- (d) Collective Agreement between the Ontario Formwork Association and the Formwork Council of Ontario; and

(e) Collective Agreement between the Utility Contractors' Association of Ontario and the International Union of Operating Engineers, Local 793.

19. As there is no longer any requirement to compile a Schedule "F" in this application, the Board stipulates 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.

20. A certificate of accreditation shall issue.

"Danna Morrison"  
for the Board