



## 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:** November 16, 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 employers for whom the responding party holds 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 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, save and except employer 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 the 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.

2. The parties have agreed on a description of the appropriate bargaining unit, the form of notice to the employers that may be affected by this application and the manner in which it is to be published. The applicant and the responding party have each provided a list of 76 employers that come within the bargaining unit for which the applicant seeks accreditation. There are differences in the list provided by each party with respect to the names of some of the contractors, however, there is significant overlap between the lists and the discrepancies are, mostly, minor.

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. The bargaining unit description to which the parties have agreed is:

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.

While the parties' agreement is a significant factor in the Board's determination of the appropriate bargaining unit under section 135 of the Act, the employers and others who may be affected by this application may have submissions to make with respect to the

description of the bargaining unit and any other issues that may arise in this proceeding.

5. The Board has not yet determined whether the description of the proposed bargaining unit to which the applicant and responding party agreed is an appropriate bargaining unit within the meaning of section 135(1) of the Act. The Board will make that determination after the Employer Filing Date or, if a hearing is scheduled in this matter, at or after that hearing.

6. Notice of this application must be provided to any employer that may be affected by this application.

7. The applicant and responding party have agreed on the form of notice that is to be provided. They have also agreed that notice should be published on the Board's website and in publications directed at construction industry contractors as well as in newspapers distributed in the geographic area affected by this application. Therefore, the Board directs the applicant to publish at its expense the attached Notice to Employers as an advertisement in the following publications:

- *Daily Commercial News;*
- *The Hamilton Spectator;*
- *St. Catharines Standard;* and
- *The Niagara Falls Review.*

The Board directs the applicant to arrange to have the notice appear as an advertisement once during the week ending **November 30, 2022.**

8. The Board directs the applicant to send forthwith to the employers on the List of Employers filed by the applicant and responding party, a copy of this decision together with a blank "Employer Filing, Application for Accreditation, Construction Industry" (Form A-94) and a blank "Accreditation: List of Employees" and to provide the Board and the responding party with confirmation of delivery to those employers.

9. The Board directs the Registrar to post the attached Notice to Employers and a copy of the "Notice to Employers of Application" on the Board's website.

10. The Registrar has fixed the Employer Filing Date as **December 30, 2022.**

11. Any employer that is affected by this application or believes it may be affected must file an "Employer Filing, Application for Accreditation, Construction Industry" (Form A-94) with the Board on or before **December 30, 2022** in order to participate in these proceedings. Any employer that does not file a Form A-94 by the Employer Filing Date will not be entitled to any further notice in this matter. This matter may proceed and be determined based on the submissions filed with the Board without further notice to any employer that has not filed a Form A-94.

12. If a hearing is scheduled in this application, notice of that hearing will be provided to the parties and to the employers that had filed a Form A-94 on or before the Employer Filing Date.

13. The Board has not yet made the determinations required by sections 134 and 136 of the Act. Those matters, together with the description of the appropriate bargaining unit, will be determined by the Board after the Employer Filing Date or if a hearing is scheduled in this matter, at or after that hearing.

14. This panel of the Board is not seized with this matter.

"Danna Morrison"  
for the Board

**NOTICE TO ALL EMPLOYERS OF OPERATING ENGINEERS  
ENGAGED IN SEWER AND WATERMAIN, ROADS, AND HEAVY  
ENGINEERING CONSTRUCTION IN NIAGARA, HAMILTON,  
AND/OR BURLINGTON (OLRB BOARD AREAS 5 AND 26) WHO  
ARE REPRESENTED BY INTERNATIONAL UNION OF OPERATING  
ENGINEERS, LOCAL 793**

The Greater Hamilton and Niagara Construction Association has applied for accreditation as an Employer association by filing an Application for Accreditation as an Employers' Organization pursuant to section 134 of the Ontario *Labour Relations Act, 1995*, for the following bargaining unit subject to specified exclusions and clarifications:

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.

This Application affects all employers of employees for whom the International Union of Operating Engineers, Local 793 holds bargaining rights and who operate in the above-noted bargaining unit. If you are an employer that is or may be affected by this application, you must file an "Employer Filing, Application for Accreditation, Construction Industry" (Form A-94) by the Employer Filing Date. The Employer Filing Date fixed by the Registrar in this matter is **December 30, 2022**.

The Board may determine this matter without a hearing after the Employer Filing Date or if a hearing is scheduled, only those employers that have filed an "Employer Filing, Application for Accreditation, Construction Industry" (Form A-94) will receive notice of that hearing.

You can determine whether you or your company is affected by this Application by inspecting the material filed in this application (OLRB Case No. **1735-22-R**) at the Ontario Labour Relations Board's website at: <http://www.olrb.gov.on.ca/Construction-EN.asp>. There, you will find a complete copy of the pleadings in this matter, copies of response forms, list of employers who may be affected by this application, and the description of the proposed bargaining unit.

Even if you are not listed on the List of Employers, you may be able to obtain notice of the proceeding if you are an employer that employs individuals in the proposed bargaining unit, and you have been active in the relevant geographic areas (OLRB Board Areas 5 and/or 26) within one year of the date of application (November 7, 2022).

Questions may be directed to Carrie Clynick, Senior Mediator, Ontario Labour Relations Board, at [Carrie.Clynick@ontario.ca](mailto:Carrie.Clynick@ontario.ca) or (647) 280-5419.

All Employers are urged to confirm whether they are affected by the Application as no further notice of this matter will be given unless employers notify the Board, by filing an "Employer Filing, Application for Accreditation, Construction Industry" (Form A-94) not later than

**December 30, 2022**, that they are affected by the Application and wish to participate in the proceeding.