



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

DECISION OF THE BOARD: April 7, 2025

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 has received interventions from both the United Brotherhood of Carpenters and Joiners of America, Local 27 (the "Carpenters") and the Resilient Flooring Contractors Association of Ontario (the "RFCOA"), to which both the Applicant and the Responding Party have objected and took the position that the interveners did not have the legal status to intervene. In two prior decisions the Board asked for submissions which have now been received. See *Residential Hardwood and Carpet Association v LIUNA 183*, 2024 CanLII 135049

(ON LRB) (the "Initial Decision") and *Residential Hardwood and Carpet Association v LIUNA 183*, 2024 CanLII 137671 (ON LRB) (the "Second Decision").

4. This decision will address the legal status of the Carpenters and the RFCAO to intervene as well as a number of outstanding issues the Board has identified with respect to the application itself that need to be addressed.

Factual Background to the Interventions:

5. The Applicant in the initial application sought to be accredited for the bargaining unit contained in the association collective agreement between the Applicant and the Responding Party dated May 24, 2024, filed with the application (the "Association Collective Agreement"). The bargaining unit in the Association Collective Agreement provided in part 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 installation or removal of carpet, service and repair of hardwood, laminate and other 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 foreman, office, clerical staff.

6. In the initial application filed on November 1, 2024, the Applicant sought to be accredited for a bargaining unit that provided, in part, as follows:

All Employers of employees **engaged in the installation or removal of carpet, service and repair of hardwood, laminate and other 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, 26, 27 and 29.

[Subject to the exclusion of certain existing collective agreements.]

7. Subsequently by letter dated November 11, 2024, the Applicant, with the consent of the Responding Party, requested to amend the bargaining unit description in its application to provide, in part, as follows:

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. [Subject to the exclusion of certain existing collective agreements.] (the "Amended Bargaining Unit Description").

8. In its Initial Decision the Board commented on the amended bargaining unit description as follows:

5. The bargaining unit description to which the parties have agreed is: . . . [the Amended Bargaining Unit Description]

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.

6. The Board has not yet determined whether the description of the proposed bargaining unit to which the Applicant and Responding Party have 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.

9. Both the Carpenters and the RFCAO base their interventions, in part, on the argument that the Amended Bargaining Unit Description is inappropriate. They take the position that the Amended Bargaining Unit

Description is inappropriate because it overlaps with RFCAO's accreditation certificate, which accredited RFCAO as the bargaining agent for all employers of employees engaged in the installation of carpet, hardwood, resilient and related floor coverings for whom the Carpenters hold bargaining rights in the residential sector in Ontario Labour Relations Board Area 8.

10. In addition, the Carpenters and the RFCAO focus their right to intervene on the fact that one of the employers to whom the application applies, namely Cardinal Floor Coverings Inc. ("Cardinal"), is bound to the collective agreement between the Carpenters and the RFCAO (the "RFCAO Collective Agreement") the trade jurisdiction of which overlaps with the Amended Bargaining Unit Description in Ontario Labour Relations Board Areas 8 and 18. The trade jurisdiction in the RFCAO Collective Agreement covers the following work:

This Collective Agreement shall cover all residential work in connection with the following types of work:

- (a) Such work as the removal of existing vinyl, asphalt, carpet, wood, and subfloors from existing floors prior to the preparation of subsurfaces to receive – preparation of layment of resilient surface to receive – the laying of plywood as underlayment to receive – the fitting of all devices, metal or otherwise, drilling of holes, etc. to receive – and the complete installation of the following materials on interior or exterior surfaces, floors, walls, roofs, ceilings, counters, stairs and base.
- (b) All resilient floor covering or surfacing such as asphalt, carpet, carpet tile, cork, mastic, linoleum, plastic, rubber, vinyl, in tile casting or sheet form insitu flooring or surfacing such as hot or cold mastic, hot or cold plastic, epoxies, polyesters, vinyls, natural or synthetic latex, magnesite in liquid compound moulded or moulded form and other natural or synthetic materials.
- (c) The laying of hardwood floors including the laying of sleepers, sub floors, sanding, finishing, sealing, metal thresholds, metal or wooden base parquet, iron bound, permacushion and all operations necessary for the complete installation of hardwood flooring.

11. The Applicant has submitted an Accreditation-Collective Bargaining Authorization signed by Cardinal on October 1, 2024, appointing the Applicant as its agent and representative for collective bargaining with the Responding Party for bargaining rights held by the Responding Party and supporting the Applicant's accreditation application. In response to this accreditation application Cardinal submitted a timely Employer Filing (Form A-94) and attached a separate List of Employees covering carpet installers and a second List of Employees covering wood installers.

12. The evolution of Cardinal's bargaining relationships with the Responding Party and the Carpenters is not straight forward. In *Carpenters and Allied Workers Local 27, United Brotherhood of Carpenters and Joiners of America v Cardinal Floor Coverings Inc.*, 2019 CanLII 49623 (ON LRB), a decision of the Board dated May 28, 2019, the Carpenters displaced the Responding Party at Cardinal for the following bargaining unit description:

all construction employees, including pieceworkers and their helpers/learners paid on a production basis as provided for herein, **engaged in the installation or removal of carpet and all work incidental thereto** working in OLRB Geographic Areas 8, 9, 10, 11, 12 and 18, 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 foreman, office, clerical staff. It is agreed that this Collective Agreement does not apply to work in the industrial, commercial or institutional sector of the construction industry.

13. In *Labourers' International Union of North America, Local 183 v Cardinal Floor Coverings Inc.*, 2024 CanLII 73502 (ON LRB), a decision of the Board dated July 11, 2024, concluding a displacement application that was filed on April 30, 2022, the Responding Party displaced the Carpenters at Cardinal for the same bargaining unit related to "the installation or removal of carpet and all work incidental thereto".

14. Unbeknownst to the Responding Party, but revealed in support of the Carpenters' intervention, the Carpenters and Cardinal entered into a memorandum of agreement dated April 29, 2020 (the "Cardinal Memorandum of Agreement"), that provided in part as follows:

2. The Employer agrees that it is bound by and will comply with all of the terms and conditions of the accredited RFCAO Agreement between the Union and FRCAO effective from

May 1, 2016 until April 30, 2019 and continuing by operation of the Labour Relations Act, as same may be amended from time to time in all of OLRB Areas 8,9 10, 11, 12 and 18;

15. The Carpenters claim that the Cardinal Memorandum of Agreement expanded their bargaining rights for the installation of carpet to include the installation of all kinds of resilient flooring, including but not limited to carpet, laminate, hardwood, and vinyl flooring based on the RFCAO accreditation certificate. Subsequently the Carpenters and Cardinal entered into a collective agreement on July 7, 2020, which repeated the expanded bargaining rights in the Cardinal Memorandum of Agreement and reiterated that Cardinal was bound to the RFCAO Collective Agreement.

16. As a result of this information contained in the Carpenters' intervention materials the Responding Party has filed an unfair labour practice complaint against the Carpenters and Cardinal in OLRB File No. 2289-24-U claiming that they failed to disclose the expanded bargaining rights when the Responding Party filed its displacement application on April 30, 2022, an allegation which is denied by the Carpenters and Cardinal (the "Unfair Labour Practice Complaint"). The dispute in the Unfair Labour Practice Complaint is over the extent of the bargaining rights the Responding Party obtained when it displaced the Carpenters on July 11, 2024, and whether or not the Carpenters retained any bargaining rights with Cardinal for the geographic areas covered by that displacement application. Those issues will be decided by a different panel of the Board. The Carpenters rely upon this Unfair Labour Practice Complaint to support their intervention.

17. The Carpenters also rely upon the Board's decision in *Carpenters' District Council of Ontario, United Brotherhood of Carpenters and Joiners of America v Cardinal Floor Coverings Inc.*, 2021 CanLII 32479 (ON LRB), which certified the Carpenters for all of Cardinal's construction labourers in all sectors of the construction industry excluding the industrial, commercial and institutional sector (the "ICI Sector") in Ontario Labour Relations Board Area 6 to support their intervention.

18. Finally, the Carpenters rely upon three more recent applications for certification which are outstanding and with respect to which the Responding Party has intervened (the "Outstanding Certification Applications").

- 1) In OLRB File No. 0812-24-R the Carpenters Regional Council, United Brotherhood of Carpenters and Joiners of America (the "CRC") has applied to certify Cardinal for all carpenters and carpenter apprentices in all sectors of the construction industry excluding the ICI sector in Ontario Labour Relations Board Area 26.
- 2) In OLRB File No. 0817-24-R the CRC has applied to certify Cardinal for all carpenters and carpenter apprentices in all sectors of the construction industry excluding the ICI sector in Ontario Labour Relations Board Areas 4 and 7.
- 3) In OLRB File No. 1244-24-R the CRC has applied to certify Cardinal for all carpenters and carpenter apprentices in all sectors of the construction industry excluding the ICI sector in Ontario Labour Relations Board Area 6.

The Intervention Arguments

19. The Responding Party objects to the intervention of both the Carpenters and the RFCAO. The Responding Party takes the position that neither the Carpenters nor the RFCAO have a direct legal interest in this application for accreditation. If the application is granted it only regulates bargaining between the Applicant and the Responding Party. The certificate of accreditation will neither create bargaining rights for the Responding Party nor diminish bargaining rights for the intervenors. The Responding Party argues that this application does not affect the rights of the Carpenters or the RFCAO. In support of its position the Responding Party refers to or relies upon the following authorities: *Terrazzo, Tile and Marble Guild of Ontario, Inc.*, 2018 CanLII 103134 (ON LRB); *Frame Carpentry Contractors Association*, 2021 CanLII 67467 (ON LRB); *Terrazzo, Tile and Marble Guild of Ontario, Inc.*, 2018 CanLII 99038 (ON LRB); *Electrical Power Systems Construction Association v. United Association*, 2007 CanLII 40725 (ON LRB); *Wood Mill Work Trim Owners Assn. of Ontario*, 2003 CanLII 4054 (ON LRB); *Masonry Contractors Association of Toronto*, 2018 CanLII 33555 (ON LRB); *LIUNA, Local 183 v Jacques Carrier & Sons Construction Ltd.*, 2019 CanLII 22645 (ON LRB); *Ontario Formwork Association v. Formwork Council of Ontario*, 2007 CanLII 52341 (ON LRB); *Masonry Contractors' Association of Toronto*, 2018 CanLII 121996 (ON LRB); *Electrical Power Systems Construction Association v The IBEW Electrical Power Council of Ontario*, 2019 CanLII 13696 (ON LRB);

Frame Carpentry Contractors Association, 2021 CanLII 67467 (ON LRB); *Ontario Railroad Contractors Association v LIUNA*, 2018 CanLII 99015 (ON LRB); *Greater Toronto Sewer and Watermain Contractors v The Oshawa Area Signatory Contractors Association*, 2022 CanLII 1663 (ON LRB); and *The Utility Contractors' Association of Ontario v IUOE*, 2015 CanLII 61645 (ON LRB).

20. In support of its main argument the Responding Party refers to the following passage from the Board's decision in *Electrical Power Systems Construction Association v The IBEW Electrical Power Council of Ontario*, *supra* at paragraphs 9 and 10.

9. The Board's test for intervenor status as of right is well-known and has been consistently applied for over four decades. It dates back to the Board's decision in *Napev Construction Limited*, [1976] OLRB Rep. March 109. In order to qualify for intervenor status as of right, a party must demonstrate a "direct and legal interest" in the subject matter of this application. An indirect, economic, commercial or incidental interest is not sufficient to merit intervenor status: *Essex County Library Board*, *supra*; *Double Team Finish Carpentry*, 2015 CanLII 65518 (ON LRB) (October 9, 2015); *International Brotherhood of Electrical Workers*, [1996] OLRB Rep. February 70; *All-Pro Construction*, [1982] OLRB Rep. August 1109.

10. In the context of accreditation applications, the Board has been consistent in denying intervenor status to competing unions: *Ontario Formwork*, *EPSCA*, *Masonry Contractors*, *Terrazzo, Tile and Marble Guild*, *supra*. The reason for this is that accreditation applications only regulate bargaining between the applicant employer organizations and the responding party trade unions. They do not affect the rights of third parties. As the Board succinctly put it in *Ontario Formwork*, *supra*, "a certificate of accreditation neither creates bargaining rights for that trade union or council nor diminishes the bargaining rights of any other trade union". [emphasis added]

21. The Responding Party also relies upon the following passage from the Board's decision in *Terrazzo, Tile and Marble Guild of Ontario, Inc.*, *supra*, at paragraph 7:

7. . . . This application will only determine whether the Guild is entitled to represent a bargaining unit of

employers whose employees are represented by BACU. None of the employers' bargaining rights with the Labourers will be affected positively or negatively by the end result in this case. This last fact is fatal to the Labourers' claim for intervenor status herein. As the Board stated in *Ontario Formwork Association, supra*, "a certificate of accreditation neither creates bargaining rights for that trade union or council nor diminishes the bargaining rights of any other trade union". Accordingly, the Labourers' bargaining rights will not be affected by the Board's disposition of this application. Given that fact, they have no legal or direct interest in its outcome and lack the status to intervene herein.

22. The Applicant supports the objections of the Responding Party and takes the position that neither the Carpenters nor the RFCAO have a direct legal interest in the accreditation application and, therefore, in accordance with the prior jurisprudence of the Board, both interventions should be denied. In support of its position the Applicant relies upon the following authorities: *Ontario Formwork Association v. Formwork Council of Ontario, supra*; and *Masonry Contractors' Association of Toronto, supra*.

23. Both the Carpenters and the RFCAO acknowledge that they have to have a direct legal interest in the application for accreditation in order to justify their interventions. They both focus their arguments on the fact that the Amended Bargaining Unit Description overlaps with the RFCAO's accreditation order and the bargaining unit and trade jurisdiction description in the RFCAO's Collective Agreement, coupled with the fact that, if the accreditation order is granted, Cardinal will be covered and have conflicting obligations given that the accredited bargaining unit descriptions will overlap. The Carpenters and the RFCAO refer to or rely upon the following authorities: *Electrical Power Systems Construction Association v IBEW-CCO & Local Union 105*, 2019 CanLII 13696 (ON LRB); *The Regional Municipality of Waterloo*, 2013 CanLII 29735 (ON LRB); *Electrical Power Systems Construction Association v The IBEW Electrical Power Council of Ontario, supra*; *Terrazzo, Tile and Marble Guild of Ontario, Inc., supra*; *The Utility Contractors' Association of Ontario v IUOE, supra*; *Electrical Power Systems Construction Association v. United Association, supra*; *Wood Mill Work Trim Owners Assn. of Ontario, supra*; *Masonry Contractors Association of Toronto, supra*; *LIUNA, Local 183 v Jacques Carrier & Sons Construction Ltd., supra*; *Greater Toronto Sewer and Watermain Contractors v The Oshawa Area Signatory Contractors*

Association, supra; Frame Carpentry Contractors Association, supra; and Ontario Formwork Association v. Formwork Council of Ontario, supra.

24. In support of its argument that the overlap in the accredited bargaining unit descriptions gives it standing to intervene and in fact warrants the application being dismissed the RFCAO relies upon the Board's comments in *Greater Toronto Sewer and Watermain Contractors v The Oshawa Area Signatory Contractors Association, supra*, at paragraph 21.

21. . . . The whole point of an accreditation order is to create a "level playing field" in the industry and eliminate anomalies that can result from "whipsawing", "leapfrogging" and other disruptive tactics. . . . It would be entirely inappropriate and antithetical to good labour relations to have two competing accredited collective agreements covering exactly the same work. Therefore, the Board will not permit the OASCA the exemption it is seeking.

25. In reply the Responding Party points out that the Board's decision in *Greater Toronto Sewer and Watermain Contractors v The Oshawa Area Signatory Contractors Association, supra*, is distinguishable because in that case the union for both employer organizations was the same union which is not the case here.

26. In addition to the argument on the overlapping bargaining units both the Carpenters and the RFCAO rely upon Cardinal's bargaining relationships with the Responding Party and the Carpenters to justify their interventions. In addition, the Carpenters argue that the Unfair labour Practice Complaint brought by the Responding Party gives it a legal interest in the outcome of the accreditation application.

Analysis on the Interventions

27. The Board agrees that neither the Carpenters nor the RFCAO have a direct legal interest in the outcome of this accreditation application and therefore their requests to intervene are denied for the reasons that follow.

28. This accreditation application, if granted, will only regulate the bargaining relationship between the Applicant and the Responding Party. As the Board has stated on numerous occasions, the granting of "a certificate of accreditation neither creates bargaining rights for that trade union or council nor diminishes the bargaining rights of any other trade union". See *Ontario Formwork Association v. Formwork Council of Ontario, supra*.

29. The argument of the RFCAO and the Carpenters relies upon the comments of the Board in *Greater Toronto Sewer and Watermain Contractors v The Oshawa Area Signatory Contractors Association, supra*, but that case is distinguishable on its facts. The case involved a dispute between the GTSWA and the OASCA, both of whom were seeking to be accredited in OLRB Area 9 for accreditation certificates that overlapped for sewer and watermain work. However, the responding party union in both of those accreditation applications was the same union, which meant that if both accreditation certificates were granted there would be two competing accredited collective agreements with the same union. That was the focus of the Board's concern. Here the potentially overlapping accreditation certificates relate to different unions so the same concerns do not arise. Employers bound to the Carpenters will have to apply the RFCAO Collective Agreement and, if the accreditation certificate in this application is granted, then Employers bound to the Responding Party will have to apply the Association Collective Agreement. This does not diminish the rights of either rights of either the RFCAO or the Carpenters.

30. Likewise, the disputes for the bargaining rights the Carpenters and the Responding Party hold with Cardinal do not give the Carpenters a direct legal interest in this accreditation application. To the extent that Cardinal is bound to the Carpenters it will have to apply the RFCAO Collective Agreement and to the extent that Cardinal is bound to the Responding Party it will have to apply the Association Collective Agreement if an accreditation certificate is granted to the Applicant. Disputes over the scope of Cardinal's bargaining obligations will have to be addressed through other proceedings before the Board. It is not appropriate to address those issues in this accreditation application.

31. Similarly, the fact that the Cardinal is bound or may become bound to the Carpenters in OLRB Geographic Areas 6, 26 or 4 & 7, does not give the Carpenters a direct legal interest in this accreditation application, which does not cover OLRB Geographic Areas 6, 26 or 4, and the fact that it does include OLRB Geographic Area 7 doesn't assist the Carpenters because the granting of an accreditation certificate in this application will not diminish any bargaining rights the Carpenters may acquire in the future in a geographic area covered by any potential accreditation certificate.

32. For these reasons the interventions of the Carpenters and the RFCAO are dismissed.

Other Considerations

33. The Board has determined that an in-person hearing is required to address a number of concerns about the current application that need to be resolved before an accreditation certificate can be issued.

34. Although nine employers filed Employer Filings on or before the Employer Filing Date, their filings were inadequate. The instructions on the List of Employees provide as follows:

"Give the location of the job site at which employees worked and describe the type of project on which the work was being done (e.g. residential, industrial, commercial, etc.) Then alphabetically list the employees at work at each site, and the occupational classification for each employee."

The job location has to be sufficient for the Board to be satisfied that the job falls within the geographic area of the accreditation application, especially when there are multiple geographic areas covered by the application as there are in this case. Some of the Lists of Employees filed by the employers fail to identify the job location or sector adequately and some fail to provide the names of the employees they are seeking to identify. The Board recognizes that dependent contractors are common in this industry, but the Board still needs the names of the employees to be included in the count. Giving the name of a company and stating that it has 4-5 employees is not adequate. The Board is prepared to allow those employers who filed Employer Filings by the Employer Filing Date to file amended Lists of Employees to address these issues, if they do so on or before **Friday, April 25, 2025**.

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.

36. The Board also has some concerns about the Amended Bargaining Unit. Section 134 of the Act provides 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. [Emphasis added]**

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

37. Given the outstanding issues the Registrar is directed to schedule an in-person hearing in consultation with the Applicant and the Responding Party.

38. This panel of the Board is seized with this matter.

"Scott G. Thompson"
for the Board