



ONTARIO LABOUR RELATIONS BOARD

OLRB Case No: **0320-15-R**

Labourers' International Union of North America, Ontario Provincial District Council, Applicant v **J.C.H. Contracting Ltd.**, Responding Party

BEFORE: Eli A. Gedalof, Vice-Chair

DECISION OF THE BOARD: May 15, 2015

1. This is an application for certification filed under the construction industry provisions of the *Labour Relations Act, 1995*, S.O. 1995, c.1, as amended (the "Act") that the applicant elected to have dealt with under section 128.1 of the Act. This application was filed on May 6, 2015.

2. The Registrar has certified that the applicant has been found to be a trade union in an earlier proceeding under the Act and Andrea Bowker the counsel for the applicant with knowledge of its affairs has declared the applicant is a council of trade unions that represents trade unions that according to established trade union practice pertain to the construction industry. Therefore, having regard to section 113 of the Act, the Registrar's certificate and the applicant's declaration, the Board finds that the applicant is a trade union within the meaning of section 1(1) and a council of trade unions within the meaning of section 126(1) of the Act. Having regard to the information provided by the applicant the Board is satisfied that Locals 183, 247, 493, 506, 527, 607, 625, 837, 1036, 1059, 1081 and 1089 are constituent trade unions of that council and that each of them vested appropriate authority in the council to enable it to discharge the responsibilities of a bargaining agent.

3. The Board also finds that the applicant is an affiliated bargaining agent of a designated employee bargaining agency. Pursuant to the designation issued by the Minister under section

153(1) of the Act on September 30, 1983, the designated employee bargaining agency is The Labourers' International Union of North America and the Labourers' International Union of North America, Ontario Provincial District Council.

4. The responding party filed its response with the Board within the time stipulated by Rule 25.5 of the Board's Rules of Procedure and provided the Board with the requisite information in accordance with subsection 128.1(3) of the Act.

5. The Board finds that this is an application for certification within the meaning of section 128 of the Act and that it relates to the industrial, commercial and institutional sector of the construction industry referred to in section 126 of the Act. Therefore, section 158(1) of the Act is applicable. It provides:

An application for certification as bargaining agent which relates to the industrial, commercial and institutional sector of the construction industry referred to in the definition of "sector" in section 126 shall be brought by either,

- (a) an employee bargaining agency; or
- (b) one or more affiliated bargaining agents of the employee bargaining agency,

on behalf of all affiliated bargaining agents of the employee bargaining agency and the unit of employees shall include all employees who would be bound by a provincial agreement together with all other employees in at least one appropriate geographic area unless bargaining rights for such geographic area have already been acquired under subsection (2) or by voluntary recognition.

6. The Board further finds, pursuant to section 158(1) of the Act, that all construction labourers in the employ of J.C.H. Contracting Ltd. in the industrial, commercial and institutional sector of the construction industry in the Province of Ontario and in all other sectors of the construction industry, excluding the industrial, commercial and institutional sector, in the Regional Municipality of Waterloo (except that portion of the geographic Township of Beverly annexed by North Dumfries Township), save and except non-working foreperson and persons above the rank of non-working foreperson, constitute a unit of

employees of the responding party appropriate for collective bargaining.

7. The Board is in receipt of four documents which were filed with the Board by facsimile transmission on May 8, 2015. One of the documents arrived attached to a cover letter, and the remaining three arrived as a single page. The four documents are a form which appear to have been downloaded from the website www.labourwatch.com and which is titled "Cancellation of Union Membership or Application for Membership". The forms state that "I do not support, I do not want to become a member or do not want to remain a Member of and I do not want to be represented by", followed by a blank space in which the name of a union can be inserted, "as it relates to the following employer", followed by a blank space for the name of the employer. The union is identified variously as "LIUNA", "Labourers International Union of North America Local 1059" and "Labourers' International Union of North America". The employer is identified as either "Jeffery Robert Snyder" or "JCH Contracting". The forms indicate that they have been filled out by four individuals whose names appear on the responding party's Schedule "A" list of employees. One of the forms was filed under cover of a letter addressed to LIUNA, which indicates that it was also copied to the parties to this application. The letter states that the writer is 18 years of age, inexperienced and did not fully understand what he was signing. It further states that "I believe I was mislead as to the repercussions that it would have on the small company I work for and my boss", and concludes "at this time I would like my name removed from your union list". All of the forms and the cover letter are dated May 8, 2015. The application was filed on May 6, 2015.

8. The Board will not give any effect to these statements. The Board will not indicate whether any of the four individuals signed membership applications which were filed with the Board. However, even assuming that they did, that the documents accurately reflect their wishes and constitute an effective revocation of union membership, they were signed on May 8, 2015, two days after the application filing date, and are therefore not relevant to the inquiry which the Board is required to make under the Act. Section 128.1(4) of the Act provides:

128.1(4) On receiving an application for certification from a trade union that has elected to have its application dealt with under this section, the Board shall determine, **as of the date the application is**

filed and on the basis of the information provided in or with the application and under subsection (3),

(a) the bargaining unit; and

(b) the percentage of employees in the bargaining unit who are members of the trade union. [emphasis added].

9. The contents of the forms do not alter whatever state of affairs existed "as of the date the application is filed". The Board has routinely refused to consider post-application "change of heart" documents (see, e.g., *Fairway Custom Services Ltd.*, 2009 CanLII 3416 (ON LRB) at paras 26 to 29, *Hillside Sod Ltd.*, [2007] OLRB Rep. Nov./Dec 1037 at 1038, *Highview Plumbing & Heating Ltd.* CanLII 28978 (ON LRB) at paras 9-10 and *Holman's Welding Limited*, [2005] OLRB Rep. July/August 621 at paras 7-9). Neither does the cover letter contain any material fact that would cause the Board to question the reliability of the membership evidence filed.

10. On the basis of only the information provided in the application (including the information and membership evidence filed by the applicant) and the information provided under subsection 128.1(3) of the Act, the Board is not able to determine the percentage of employees in the bargaining unit who were members of the applicant as of the date the application was filed. The Board will determine that, along with all other issues in dispute, following a Case Management Hearing.

Status Disputes

11. Status Disputes are determined in accordance with Information Bulletin No. 9: Resolving Disputes in Certification Applications in the Construction Industry.

Applicant

12. The Board directs the applicant no later than five days from the date of this decision to deliver to the responding party and file with the Board its challenges to any person whose name the applicant asserts should not be on Schedules A and B (lists of employees) filed by the responding party along with the names of any additional persons it asserts should be on the Schedule A (list of employees). In the case of names the applicant asserts should be added to the list of employees, the Board directs the applicant to file with its list of names

all the basic facts on which the applicant relies. The basic facts should include at least where the individual was working and what the applicant asserts the individual was doing.

Responding Party

13. The Board directs the responding party no later than 10 days from the date of this decision to deliver to the applicant and file with the Board a statement of its position in response to the applicant's challenges and additions, together with its reasons for those positions and the basic facts on which it relies. The basic facts should include at least where the individual was working and what the responding party asserts the individual was doing. The Board further directs the responding party to include in its submissions all relevant documents, including payroll records, time sheets, invoices and any other document relating to the payment of money for work performed with respect to those persons whose status is challenged.

Applicant

14. The Board directs the applicant no later than 15 days from the date of this decision to deliver to the responding party and file with the Board a statement of its position in response to the responding party's position, together with its reasons for those positions and the basic facts on which it relies that it has not already pleaded. The Board further directs the applicant to include in its submissions all relevant documents in its possession.

Other Disputes

15. If there are any factual or legal disputes that the Board will be required to determine at any time during the course of this application, the party wishing to raise the issue must, within 15 days of the date of this decision, provide to the other parties and the Board a statement of the legal or factual issues including all the relevant facts on which the party relies. All facts must be pleaded in accordance with Rule 5.1, and copies of the basic relevant documents must be included in the submissions.

Particulars and Disclosure

16. In the event that any party is not satisfied with the particulars or the production of documents by any other party with respect to

status or any other issues, then within five days of the other party's last submissions, that party is required to advise the other of all the additional factual particulars it seeks to have pleaded and all the documents that it seeks to have produced. A copy of this request is to be filed with the Board. Within five days of receipt of such demand the party of whom the demand is made must provide the particulars and documents, or set out the reasons in writing for its refusal.

Case Management Hearing

17. The date and time of the Case Management Hearing are set out in the Confirmation of Filing.

18. The purpose of the Case Management Hearing is set out in Information Bulletin No. 9. It is not merely a pre-hearing conference. The parties must be prepared to make submissions addressing all issues they have identified in their written materials. The Board at the Case Management Hearing will deal with both procedural and as many substantive issues, including status disputes, as it is able when in the opinion of the Board the parties have had an adequate opportunity to address those issues in their written submissions, and no further evidence is necessary.

19. The responding party is directed to post copies of this decision immediately in a location or locations where they are most likely to come to the attention of individuals in the bargaining unit. These copies must remain posted for a period of 45 business days.

"Eli A. Gedalof"
for the Board