



ONTARIO LABOUR RELATIONS BOARD

Labour Relations Act, 1995

OLRB Case No: 2143-21-R
Certification (Construction)

Trade Union Council of Ontario, Applicant v Valard Construction LP,
Responding Party v Canadian Union of Skilled Workers, Intervenor

COVER LETTER

TO THE PARTIES LISTED ON APPENDIX A:

The Board is attaching the following documents:

Decision
Notice of Electronic Vote
Notice of Hearing
Declaration #1
Declaration #2
Declaration #3
Declaration #4

DATED: February 25, 2022

Catherine Gilbert
Registrar

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ONTARIO LABOUR RELATIONS BOARD

OLRB Case No: **2143-21-R**

Trade Union Council of Ontario, Applicant v **Valard Construction LP**,
Responding Party v Canadian Union of Skilled Workers, Intervenor

BEFORE: Lindsay Lawrence, Vice-Chair

DECISION OF THE BOARD: February 25, 2022

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").
2. This application was filed by the Trade Union Council of Ontario (the "applicant"). The applicant has filed a declaration, in which Craig Flood, the solicitor of the applicant with knowledge of its affairs has declared the applicant is a council of trade unions that according to established trade union practice pertains to the construction industry and that each of the Local Unions has vested appropriate authority in the council to enable it to discharge the responsibilities of a bargaining agent.
3. The applicant has named Canadian Union of Skilled Workers ("CUSW") as a trade union that may be affected by this application, and CUSW has filed an intervention. CUSW disputes the applicant's status as a trade union or council of trade unions. This issue may be addressed following the vote.
4. This application was filed on February 17, 2022. The employees who are affected by this application are covered by a collective agreement between the responding party and CUSW with an effective date of April 1, 2019, until March 31, 2022. The bargaining unit description in that collective agreement is as follows:

All employees of the employer engaged in construction and/or maintenance work excluding management functions.

Having regard to the provisions of section 63(2) of the Act, the Board finds that this application is timely.

5. The responding party was duly served with the application material, according to the certificate of delivery filed by the applicant, and filed its response with the Board within the time stipulated by Rule 25.5 of the Board's Rules of Procedure.

6. It appears to the Board on an examination of only the information provided in the application and the information and membership evidence filed by the applicant (see section 8(3) of the Act), that not less than 40% of the individuals in the bargaining unit proposed in the application for certification were members of the union at the time the application was made.

7. The responding party disputes the applicant's estimate of the number of employees in the applicant's proposed bargaining unit. Furthermore, the responding party and CUSW propose different bargaining units than that proposed by the applicant and they each contend that the applicant's bargaining unit could not be appropriate. CUSW includes "construction and/or maintenance work", while the applicant and the responding party do not. The responding party has given notice under section 8.1 of the Act. Moreover, CUSW has filed with the Board lists of individuals and statements from these individuals purporting to revoke their applications for membership in the constituent members of the applicant.

8. All of these issues, including the section 8.1 issues, as well as the purported revocations, may be addressed after the vote. The nature of the disputes respecting the bargaining unit are such that I direct that all ballots be individually segregated and not counted until the Board so orders or the parties agree.

9. The Board directs that a representation vote be taken of the individuals in the following voting constituency:

all employees of Valard Construction LP engaged in construction and/or maintenance work in the Province of Ontario excluding employees engaged in management functions.

10. The responding party and CUSW have expressed concern about voting arrangements, including that employees work in remote areas raising concerns about reliability of telephone and internet connection. The responding party has requested that voting take place over a two-week period and that a combination of in-person and electronic voting take place.

11. In accordance with the Board's current practice the Board will conduct an electronic vote. Given the circumstances of this particular vote, however, the Board will extend the vote period and will provide additional Help Desk hours. The responding party is directed to provide only to the Board the email addresses for each of the individuals in the voting constituency so that the Board can provide electronic email notice of the vote. Within this same timeframe, it must also email only the Board the mailing addresses, telephone numbers and employee numbers to the extent that it is in possession of such information for each of the individuals in the voting constituency. It is directed to email all of this information to the Board by **5:00 p.m. (EST) on Monday, February 28, 2022 at: OLRBVotes@ontario.ca**. This information should be delivered in Excel format.

12. Although the Board strives to hold representation votes within five days, the current pandemic has resulted in minor delays in holding votes. **The vote will commence on Wednesday, March 2, 2022, at 11:00 a.m. (CST) / 12 p.m. (EST) and the voting will remain open until Wednesday, March 16, 2022 at 11:00 a.m. (CT) / 12 p.m. (ET).** This period may be extended at the discretion of the Manager of Field Services. Other vote arrangements will be as directed by the Registrar and set out on the attached "Notice of Vote".

13. The responding party is directed to post copies of the application for certification, the "Notice to Employees of Application for Certification", this decision and the "Notice of Vote" in a location or locations where they are most likely to come to the attention of those individuals who are eligible to vote. These copies must remain posted for 45 business days.

14. All individuals who were employed by Valard Construction LP and at work in the voting constituency on February 17, 2022 are eligible to vote.

15. Voters will be asked to indicate whether or not they wish to be represented by the applicant or the intervenor in their employment relations with the responding party.

16. Any party or person who wishes to make representations to the Board about the conduct of the vote, must file a detailed statement of representations and all material facts upon which they rely with the Board and deliver it to the other parties, so that it is received within five days (excluding Saturdays, Sundays and holidays on which the Board is closed) of the date on which the vote is taken.

Status Disputes

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

Challenges to the right to cast a ballot and Challenges and Additions to the List under s. 8.1

18. Each party must identify in writing no later than the conclusion of the balloting on the day of the representation vote those individuals whose inclusion on the list(s) of employees that the party is challenging, and any additions it wishes to make to the list(s) for all purposes including voting or for purposes of the section 8.1 issue. In addition, any challenge to an individual voter must be raised with the Labour Relations Officer conducting the representation vote before the individual casts his or her ballot.

Submissions

19. Each party must within five days of the representation vote make any submissions with respect to the conduct of the vote, as well as any status disputes, and deliver those submissions to the other parties and to file them with the Board. In respect of challenges to a ballot that was cast and sealed, each party challenging the counting of the ballot must set out its reasons why it has challenged that person's right to cast a ballot, and must include the basic facts on which it relies in support of that challenge.

Reply

20. Any party wishing to file a response to the challenges may do so within five days of receiving the submissions of the other party, and deliver a copy of those submissions to the other parties and file them with the Board. 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 the persons challenged.

Other Disputes

21. 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

22. 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 its reasons in writing.

Case Management Hearing

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

24. 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.

25. 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 days.

"Lindsay Lawrence"

for the Board