

Part 3 of the Labour Relations Code was recently amended. The Board is in the process of developing an updated Information Bulletin to address those changes.

#11 BARGAINING UNITS FOR THE BUILDING TRADES

I. INTRODUCTION

This Bulletin describes the Board's bargaining unit policies that affect building trade employees and their employers. It was prepared after a report (*Bargaining Unit Policies for Construction and Construction Related Employment*) and the industry provided feedback. See: [1997] Alta. L.R.B.R. DP-001.

Unions should use this Bulletin as a guide when applying for certification. See: *Bulletin 8*.

II. CONSTRUCTION VERSUS NON-CONSTRUCTION WORK

Building trades employees, and their employers, do some work that fits the *Labour Relations Code's* definition of construction work. Section 1 of the *Labour Relations Code* defines "construction":

1(g) "construction" includes construction, alteration, decoration, restoration or demolition of buildings, structures, roads, sewers, water or gas mains, pipelines, dams, tunnels, bridges, railways, canals or other works, but does not include

(i) supplying, shipping or otherwise transporting supplies and materials or other products to or delivery at a construction project, or

(ii) maintenance work;

See: Transwest Dynaquip Ltd. et al. v. IBEW 424, [1994] Alta. L.R.B.R. 99; Burnco Rock Products v. Teamsters 362, [1993] Alta. L.R.B.R. 89; OE 955 v. Lafarge Canada, [1992] Alta. L.R.B.R. 569; Elevator Constructors 130 v. C&M Elevator Ltd. et al., [1995] Alta. L.R.B.R. 301.

Part 3 of the *Labour Relations Code* sets up a unique system of registration bargaining for the construction industry. This system is described in Information Bulletin 12. Most of the industry bargains under registration.

It is the Board's policy to certify construction employees in separate bargaining units from non-construction employees. This is because a bargaining unit must be appropriate for collective bargaining. Registration bargaining follows a different course than non-construction bargaining. See: *Bulletin 9*.

The Board has adopted standard bargaining unit policies for construction employees based on craft lines. This is necessary because registration bargaining occurs on craft lines. Craft divisions also influence unionization and training in the construction industry.

Building trades employees, and their employers, do other work that falls outside the construction definition, even though it involves the same employee skills. The Board calls this category of work “non-construction work”. This other work includes service, maintenance and repair. It also includes building trade work in plants, mines or manufacturing.

If asked to determine if the work is construction or not, the Board's considerations include:

- the business of the employer; *See: CLRa v. IUEC Locals 122 & 130 et al., [1997] Alta. L.R.B.R. 364.*
- the location where the work takes place (construction work tends to be performed on a site which is temporarily used for that purpose and which have another purpose once the work is completed);
- the practices in the industry;
- the prime function of the employees;
- the presence of other trades or other employees; and
- the result of the work.

III. CONSTRUCTION INDUSTRY BARGAINING UNIT PRINCIPLES

The Board certifies construction employees on a trade-by-trade basis. This is because registration bargaining takes place this way. It is also because trade unions and many employers operate along craft lines. Employees within a craft share a community of interest. They share skills, working conditions, training and union benefit provisions. *See: Building Trades Council v. TNL Industrial Contractors and Ledcor Industries et al., [1996] Alta. L.R.B.R. 497.*

The Board also certifies construction employees on a sector-by-sector basis. The regulations under the *Labour Relations Code* divide the construction industry into four sectors:

- **General Construction:** All construction work that is not included in one of the other sectors and includes industrial, commercial, institutional and residential work.
- **Pipeline Construction:** Construction of a system of connected lengths of pipe or joints, usually buried in the earth or laid underwater.
- **Roadbuilding and Heavy Construction:** Preparation and excavation of commercial and industrial sites, gravel pits and industrial projects and the construction of roads, approaches, railroads, curbs and gutters, and resurfacing and repairing roadways. *See: IUOE Local 955 v. Foundation Co. of Canada et al., [1990] Alta. L.R.B.R. 631.*
- **Specialty Construction:** Work which spans or services the other sectors such as non-destructive testing work and work in respect of crane rentals in the construction industry.

Registration bargaining occurs separately within each sector. A sector is a portion of the construction industry defined by the type of construction activity performed. Therefore, sector-based certifications are appropriate for sector-based registration bargaining. *See: Construction Industry Labour Relations Regulation; IUOE Local 955 v. Foundation Co. of Canada et al., [1990] Alta. L.R.B.R. 40.*

The Board bases its unit descriptions on job function. Job function means the work that the employees do, not necessarily what they are called. The Board looks to the primary job function that the person is performing around the date of application. Job qualifications are important because they help the Board decide what a person is doing. However, the Board does not grant certificates for "all qualified" tradespersons in a craft.

When determining which bargaining unit an employee may fall into, the Board considers:

- **The unit applied for:** What trade is involved?
- The nature of the employer's business: Usually and by particular contract?
- **The prime function of each employee:** What skills does the employee use? What tools? What materials? Does the employee do the work or assist? Percentage of time this work involves out of the total duties?
- *See: Bulletin 22; Brauns Construction Ltd. v. Construction & General Workers', Local Union No. 92, [1992] Alta. L.R.B.R. 10.*

The Board uses generic terms to describe each unit. Section IV below lists the Board's standard units for each sector. The following principles apply to each unit:

- Each unit description also includes the foremen, apprentices and welders related to the trade.
- The Board does not differentiate between qualified and unqualified tradespersons.
- By foremen we mean all non-managerial persons working within the trade, whether called foremen, lead hands, working supervisors or some other name.
- All construction units apply to the trade union local's territorial jurisdiction unless the unit description contains some other limitation. This is true even though Registration Certificates are province wide in scope.
- Trade jurisdictions are not intended to overlap. In cases where jurisdictional disputes arise, the Board may determine, for applications under the Code, which jurisdiction covers particular work. *See: Section 12(3)(q), (r).*
- The Operating Engineers bargaining units include related heavy duty mechanics.
- Many trades are not listed for the Pipeline or Roadbuilding and Heavy Construction Sectors. If employees in such unlisted trades work in those sectors, the Board will also grant certification for such additional trades within those sectors.
- The Board considers it inappropriate to grant a joint application for a unit combining two or more of these standard trade units.
- For a list of trades currently subject to registration, see Information Bulletin 12.

IV. STANDARD CONSTRUCTION BARGAINING UNITS

The Board considers the following construction industry units appropriate for collective bargaining:

General Construction Sector:

General Construction Boilermakers
General Construction Camp Caterers
General Construction Carpenters

General Construction Cement Masons
General Construction Drywall Tapers
General Construction Electricians
General Construction Floor Coverers
General Construction Elevator Constructors
General Construction Glassworkers
General Construction Insulators
General Construction Labourers
General Construction Lathers and Interior Systems Mechanics
General Construction Masonry Bricklayers
General Construction Millwrights
General Construction Operating Engineers
General Construction Painters
General Construction Plasterers
General Construction Plumbers and Pipefitters
General Construction Refractory Bricklayers
General Construction Refrigeration Mechanics
General Construction Reinforcing Ironworkers
General Construction Roofers
General Construction Sheet Metal Workers
General Construction Sheeters, Cladders and Deckers
General Construction Sprinkler Fitters
General Construction Structural Ironworkers
General Construction Teamsters
General Construction Tilesetters

Pipeline Construction Sector:

Pipeline Construction Labourers
Pipeline Construction Operating Engineers
Pipeline Construction Teamsters
Pipeline Construction Pipefitters

Roadbuilding and Heavy Construction Sector:

Roadbuilding and Heavy Construction Labourers
Roadbuilding and Heavy Construction Teamsters
Roadbuilding and Heavy Construction Operating Engineers

Specialty Construction Sector:

Specialty Construction Crane Rental Employees
Specialty Construction Non-Destructive Testing Employees

V. NON-CONSTRUCTION BARGAINING UNITS

Tradespersons work in a variety of situations other than construction. Often the Board must choose between two competing interests - the employees' and the employer's. Trade or craft-based units allow tradespersons to bargain through their craft union. This can, however, create many units within one workplace. It can cause jurisdictional problems. It can also impose too much collective

bargaining upon employers. The guidelines below set out the Board's views on how to strike a proper balance for certain types of employment. Traditionally, the Board identifies maintenance units along craft lines while non-construction units span all crafts.

Maintenance Contractors

Alberta industry relies on the services of maintenance contractors. These contractors supply labour and expertise to maintain and repair industrial plants. They may perform “long-term contract” ongoing maintenance work at a plant or major “turn-around” maintenance during a plant shutdown or both.

Most often, these employers have structured their operations to coincide with the various trade union hiring halls. That is, their activities rely on the traditional craft lines of the building trade unions. The Board's policy is to certify maintenance contractors on a craft-by-craft basis for maintenance work. The various eligible trades are the same as those used for the general construction industry.

This policy applies to those contractors who are, or do work similar to, those signing the Building Trades General Presidents' Agreement. Many other employers do maintenance type work but they are not covered by this policy. This policy only applies to those primarily engaged in the business of long-term or turn-around industrial plant maintenance.

For such employers, the Board considers units such as:

- All Maintenance Millwrights
- All Maintenance Plumbers and Pipefitters

as appropriate for collective bargaining.

For trade-based units of maintenance contractors the following principles apply to each unit:

- Each unit description also includes the foremen, apprentices and welders related to the trade.
- The Board does not differentiate between qualified and unqualified tradespersons. *See: Section 1(l).*
- By foremen we mean all non-managerial persons working within the trade, whether called foremen, lead hands, working supervisors or some other name.
- All maintenance units apply to the trade union local's territorial jurisdiction unless the unit description contains some other limitation.
- Trade jurisdictions are not intended to overlap. In cases where jurisdictional disputes arise, the Board may determine, for applications under the Code, which jurisdiction covers particular work.
- Operating Engineers bargaining units include related heavy duty mechanics.

Labour Brokers

The use of labour brokers varies widely. In assessing an application for certification, the Board examines the way in which the broker's clients usually requisition and deploy employees. It also looks to employee function. The Board does not necessarily follow the wide variety of employee titles used by these employers.

Usually, the Board will apply the same appropriateness considerations that would be used for the type of work the broker supplies the employees to perform. This can vary from construction trades units to all employee units. *See: Bulletin 9.*

Single Trade Subcontractors

Many employers who act as construction subcontractors often only employ employees from one or two trades. They frequently perform service and repair work, sometimes using the same employees for construction and non-construction work. For such contractors, one or more craft-based, non-construction units may be appropriate. Examples might be:

- Non-construction Elevator Mechanics
- Non-construction Painters

Fabricating Shops

In *UA 496 v. Stearns-Rogers Limited*, [1982] Alta. L.R.B.R. 82-012, the Board described four types of fabricating shops:

1. An **on-site shop** set up by a construction contractor or subcontractor engaged in building the project to build modules for incorporation into the project.
2. A **shop set up off-site** by a construction contractor or subcontractor engaged in building the project to build modules for transportation to the site for incorporation into the project.
3. A **shop set up off-site** by an employer other than the construction contractor or subcontractors engaged in building the project to build modules for the owner, contractor or subcontractor, for transportation to the site for incorporation into the project.
4. A **permanent shop** that, as part of its business, manufactures modules for incorporation into construction projects. This shop usually has a number of customers, probably manufactures certain “catalogue items” and has a permanent location and work force. It may be producing construction modules for different projects at one time or in sequence.

The Board found that the first three types of shops are part of the construction industry and the Board's policies on construction bargaining units apply. The fourth type of shop is commonly called a “commercial fabrication shop” and is included in the non-construction bargaining units.

Commercial Fabricating Shops, Service, Repair and Specialty Trade Contractors

These categories cover a wide variety of employers all employing tradespersons, as well as other employees. The Board looks to the bargaining unit which appropriately balances the representational wishes of the employees and the legitimate interests of the employer.

When describing trade-based bargaining units for the employers, the Board uses the term “non-construction” in the bargaining unit description to distinguish the work of the trades persons from those in construction and those working for maintenance contractors.

The following guidelines may assist the parties in describing an appropriate unit:

1. Where the employer's work force involves only employees affiliated with a particular craft, the Board would grant a craft non-construction unit. This situation would often arise for a

subcontractor who did both construction work and service and repair work within the same trade.

2. Where the employer had an integrated work force where tradespersons from several crafts worked along-side production employees in a plant or manufacturing type situation, the Board would normally only grant an all employee unit for that employer.
3. Where the employer operates a shop with employees from more than one craft, and possibly non-craft employees, the Board would consider applications for either:
 - an all employee unit except office and clerical, construction, security and quality control,
 - a craft unit excluding construction, or
 - an all employee unit except office and clerical, construction, security, quality control and a specified craft (a “wrap-around” or “tag-end” unit).

• *See: Sheet Metal Workers' International Association Local No. 8 v. L.A. Brayer Industries Ltd. et al., [1986] Alta. L.R.B.R. 484.*
4. Where the employer has clerical employees the Board would always exclude them from a straight craft unit. The Board would normally exclude them from an all-employee or a “tag-end” unit, unless the Board was satisfied the clerical employees wanted inclusion. This is to prevent their being swept in as a result of the superior numbers of the blue-collar employees
5. Where the employees work in a shop, the Board might limit the certificate to employees working “in or out of the shop”. If the same employer was also a maintenance contractor, this would distinguish the shop, service and repair employees from those engaged in the maintenance contracting aspect of the business. Again, this refers to a maintenance contracting business, not all maintenance work, some of which falls into what we are calling service and repair work performed by persons working in or out of the shop.

Plants

The Board favours plant type units for manufacturing plants, petrochemical plants, tarsands plants, power plants, mines and similar undertakings. Normally, the unit would read:

All employees [at the plant] except office and clerical personnel.

This policy recognizes the normal grouping together of tradespersons and operating personnel in such production facilities. Usually, as a result of the tradespersons intermingling with the operation employees, they share a strong community of interest with the operations group.

The Board usually excludes office and clerical employees. Applicant unions can include them if they can show majority support within the office and clerical group. This is to avoid the capture of such staff into a unit by the (usually much larger) industrial work force.

Territorial Scope

Unlike construction or units for maintenance contractors, these non-construction units are not necessarily limited to the applicant trade union's territorial jurisdiction. The appropriate geographic scope of the unit depends on the nature of the employer's operations. Sometimes it will be appropriate to limit a unit's scope to a shop, a city, or a given region. All employee units apply to the employer's operations throughout the province unless the certificate specifies some limitation.

VI. BARGAINING UNIT DESCRIPTIONS

Applicant unions should consider the points included in Information Bulletin 9 when drafting unit descriptions. *See: Bulletin 9.*

See also:

Information Bulletins 12 and 21

For further information or answers to any questions regarding this or any other Information Bulletin please contact:

Director of Settlement
Labour Relations Board
501, 10808 99 Avenue
Edmonton, Alberta T5K 0G5
Telephone: (780) 422-5926

Manager of Settlement
Labour Relations Board
308, 1212 31 Avenue NE
Calgary, Alberta T2E 7S8
Telephone: (403) 297-4334

Email: alrb.info@gov.ab.ca

Website: alrb.gov.ab.ca