



**ALRB cite:** *International Union of Operating Engineers, Local 955 v. Lafarge Canada Inc.*  
[1992] Alta. L.R.B.R. 569

---

**INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 955, Applicant and LAFARGE CANADA INC., Respondent. Board File: GE-00960. September 28, 1992.**

*Mark L. Asbell, Vice-Chair, Donna Neumann and Lesley Anne Haag, Board Members.*

For the Applicant: Robert A. Philp, Matt McGinnis, Ronald Macdonald

For the Respondent: Phillip Ponting, Q.C., Norm Wood, James N. Skinner, Ron Hystad, Owen Burgess

**Construction Industry - s. 1(1)(g) (L.R.C.) - Employer operating road construction division, gravel plant, concrete plant, soil cement plant, asphalt plant and maintenance shop - Materials plants falling outside of “construction industry” - “Supplying” of materials including production of materials.**

**Certification - Consolidation - s. 39 (L.R.C.) - Union applying to consolidate three certificates for employer’s gravel plant, concrete plant, asphalt and soil cement plants and maintenance shop with roadbuilding certificate - Board dismissing application - Materials plants falling outside statutory definition of “construction”.**

*Lafarge maintained a road construction division for which the Union was certified. It also operated a maintenance shop, a gravel excavation site and wash plant, a concrete plant, two portable soil cement plants and an asphalt plant. The Union held three separate certificates covering employees at these other operations. The materials plants were operated separately and supplied materials to buyers other than Lafarge’s roadbuilding division. The concrete plant supplied materials primarily to contractors in the general construction sector. There was little interchange of employees among the different plants. The maintenance shop supplied maintenance services to all of the materials plants, but the majority of this maintenance work was performed in the shop rather than in the field. The Union applied to consolidate all three certificates for these operations with its roadbuilding certificate.*

*The Board dismissed the application. Employees at the materials plants were engaged in “supplying ... materials or other products to ... a construction project” and so were outside the definition of “construction” in s. 1(1)(g) of the Code. “Supplying” products includes producing the products. The Board’s decision in Conmac Western Industries (1981) Alta. L.R.B.D. 81-041 was not followed because the Code now specifically exempts the business of supplying construction materials from the construction industry. These operations therefore fall outside the scope of the Union’s roadbuilding certificate. It was not appropriate to consolidate the Union’s construction and non-construction certificates. It remained appropriate to include the maintenance shop employees in the bargaining unit with the soil cement and asphalt plant employees.*

## REASONS FOR DECISION

**Mark L. Asbell, Vice-Chair:** Lafarge Canada Inc. (“Lafarge”) owns a multi-faceted operation. Their activities include the excavating, crushing, screening and washing of gravel. The gravel produced is used to make concrete and asphalt. To this end, Lafarge operates the Villeneuve Wash Plant and Pit, the Edmonton Concrete plant, the Soil Cement plants, the Clover Bar Asphalt plant and the shop employees. These are the operations affected by this application. There is also a construction division engaged in roadbuilding and heavy construction. There are a number of other companies and divisions which are not relevant to this application.

On January 15, 1992, the Board issued certificates 15-92, 16-92, 17-92 and 18-92. These certificates certify the International Union of Operating Engineers, Local 955 (the “Union”) as the bargaining agent for a number of units of employees of Lafarge. These certificates were issued under the replacement certificate provisions of the *Labour Relations Code*. Section 205(4) specifies that “the Board shall issue a certificate to replace each certificate subsisting under the *Labour Relations Act*”. These certificates are among the last remaining certificates to be issued under this section.

Certificate 16-92 replaced Certificate 24-52 issued in 1952. Certificate 16-92 certifies the Union as the bargaining agent for all employees of Lafarge described as “Roadbuilding and Heavy Construction Operating Engineers”. This Certificate continued the bargaining relationship between the Union and Lafarge in the roadbuilding industry. Employees falling within the scope of this certificate are employed under the terms of a collective agreement signed by the Union and the Alberta Roadbuilders and Heavy Construction Association, (the “Roadbuilders Agreement”).

Certificates 15-92, 17-92 and 18-92 replaced Certificate 167-65. The old single certificate covered a number of different operations of Lafarge. After lengthy discussions, and with the consent of both of the parties, the Board issued the three new replacement certificates. These certificates certified the Union as bargaining agent for the following units of employees of Lafarge:

**Certificate 15-92.** All employees of Lafarge Construction Materials Northern Alberta region, Edmonton Concrete Division in Edmonton except office and quality control personnel, labourers, warehouse persons and those covered by Teamsters’ certificate #26-91;

**Certificate 17-92.** All employees of Lafarge Construction Materials Northern Alberta region, Construction Materials Division at the Villeneuve Wash Plant and Pit except office personnel;

**Certificate 18-92.** All employees of Lafarge Construction Materials Northern Alberta region, Construction Division at the Soil Cement Plants and at the Cloverbar Asphalt Plant and Shop except office and quality control personnel, labourers and warehouse persons.

The Union now brings an application under section 39 of the *Code* asking the Board to consolidate these four new replacement certificates into one certificate. Alternatively, or additionally, the Union seeks an application under section 43 to modify the certificates to more accurately reflect the circumstances of collective bargaining between the parties. It is the Union's position that the bargaining units described in Certificates 15-92, 17-92 and 18-92 are an integral part of roadbuilding and should be covered within the scope of Certificate 16-92. The Union also states that there has been a fundamental change in Lafarge's operation, making the current certificates inoperable.

Sections 39 and 43 read:

*39(1) One or more certified bargaining agents may apply to the Board for the consolidation of certificates of 1 or more bargaining agents into a consolidated certificate.*

*(2) When the Board, after any inquiry it considers necessary, is satisfied that the certificates of the bargaining agents should be consolidated, the Board shall issue a consolidated certificate*

*(a) naming the trade union or trade unions as the certified bargaining agent or agents,*

*(b) naming the employer in respect of which the trade union or trade unions are certified as bargaining agent or agents, and*

*(c) describing the unit in respect of which the trade union or trade unions are certified as bargaining agent or agents.*

*(3) When a consolidated certificate is issued, the Board may declare which collective agreements, if any, shall continue in force and which collective agreements, if any, shall terminate.*

*43 The Board may, on the application of any trade union or employer affected, modify the description of a bargaining unit contained in any certificate if it is satisfied that*

*(a) the former certificate no longer appropriately describes the circumstances of collective bargaining between the parties,*

*(b) the modification is not such as may call into question the union's majority support within the bargaining unit, and*

*(c) it is otherwise appropriate to make the modification.*

### **Lafarge's Operations**

Lafarge is split into a number of companies and divisions, each with a separate corporate identity. Each division is in a separate marketplace with separate buyers. Each division is responsible for its own sales, credit and production. A witness for Lafarge testified that the corporation is not vertically integrated. Put another way, the individual companies do not work just for the parent company or for each other. The operations affected by this application include the Villeneuve Wash Plant and Pit, the Edmonton Concrete plant, the Soil Cement plants, the Clover Bar Asphalt plant and the shop employees.

The Union says that the balance of the work performed by these operations is linked to, or engaged in, roadbuilding work. They state that it is all a single operation. Lafarge acknowledges having a Construction Division consisting of a company named Crown Paving. Lafarge states that the other operations are providing supplies and services and are not engaging in roadbuilding work. Do the employees in question perform roadbuilding work? Should the certificates be consolidated or modified to reflect this if they do?

The Construction Division is responsible for providing construction expertise for Lafarge's clients. The services provided include the construction, alteration or restoration of roadways, curbs, gutters and sidewalks. In total sales dollars, we were informed that 20% of Lafarge's earnings come from the Construction Division, and 80% comes from the "supply divisions". Employees in the Construction Division are covered by the Roadbuilders Agreement and fall within the scope of Certificate 16-92.

The Concrete Plant is located on Stadium Road in the City of Edmonton. This Division produces concrete for other Lafarge companies as well as unrelated companies. Gravel, aggregate and other materials are purchased from a number of sources and delivered to the Concrete Plant. At the present time, all of the aggregate purchased for the production of concrete is purchased from a competitor rather than a related company. An operator selects the mix designs and feeds the materials into the plant. The material is mixed and loaded into trucks. The product is then delivered to various job sites. 85% of the product is supplied for use in general construction. This includes the construction of large commercial construction projects such as the Edmonton City Hall project and the Grant McEwan Community College complex. It also includes the provision of product for residential construction. The remaining 15% of the product is used in road construction. Lafarge has no company performing work in the general construction area.

The Villeneuve Wash Plant and Pit produces aggregate. This is a fixed plant which has been in the same location since 1971. Gravel is screened, put through a crusher, screened again, and then stock piled. Product produced includes concrete aggregate, concrete gravel and miscellaneous fill. A witness for the Union stated that in 1991, concrete aggregate made up less than 10% of the total product produced. For the same period, he indicated that concrete gravel accounted for 60% of the material produced. This material is supplied for the paving of roads and maintaining secondary roads. Miscellaneous fill amounts to about 15% of total production. Fill sands are used in house building and as a base for buildings. They have no industrial use.

After an order is placed by a customer, the material is loaded into a truck. The material is delivered by independent haulers or picked up by a truck sent by the customer.

There is no employee interchange between the Villeneuve site and other Lafarge operations. The employees maintain their own equipment on site. Equipment which can be moved may be taken to the maintenance shop for maintenance. A mechanic or welder from the shop may come out to the Villeneuve site if the on-site employees cannot repair the equipment. This occurs rarely.

A Lafarge company is the largest single customer for the Villeneuve plant. In the past, one of the purchasers for the concrete aggregate produced was Lafarge's Concrete Plant. At present, however, Lafarge's Concrete Plant can obtain the concrete aggregate at less cost through one of the Villeneuve plant's competitors. It is for this reason that the Concrete Plant no longer uses aggregate from this division. The concrete aggregate is currently sold to anybody who makes concrete including competitors of Lafarge's concrete division.

The Soil Cement plant is located at the Cloverbar Asphalt plant site, where the stock piles are located. Another soil cement plant has been moved to the Villeneuve site but is not yet operational. The plants can be moved. The plants are normally located near stock piles of aggregate.

The material produced is a mixture of aggregate, cement and water. Customers primarily use the product for roadbuilding. Clients include Crown Paving from Lafarge's Construction Division, and a few other paving companies. Most of Lafarge's competitors in the roadbuilding area have their own soil cement division. These competitors tend to purchase their soil cement from their own affiliated company.

There is no interchange of employees working at the soil cement plant with other Lafarge companies. The loader operator for the asphalt plant may, on occasion, operate the loader for the soil cement plant. No field employees go to the site with the exception of a rare appearance by a field mechanic.

The Asphalt plant is also located at the Cloverbar site. Three raw materials are used in the processing at the plant. These include gravel, asphalt-cement, as well as fly ash. A loader picks up the material and puts it into one of four bins. There, it is fed into a dryer. Material is then elevated to the top of the plant where it is screened, weighed and alternately discharged into a mixer. It is then loaded into a truck for transportation. The mixing is all done by design according to customer needs. The material produced is primarily used for roadbuilding.

The maintenance shop is located in Edmonton. The shop is responsible for repairing and maintaining heavy equipment. Additionally, the field mechanics are responsible for repairing any equipment which the on-site employees cannot repair. There are approximately ten mechanics located at the shop. Included in this group is one field mechanic and one field welder. These employees travel to the various sites. The majority of the work is performed at the shop. Generally, the only time equipment is repaired on site is if the equipment has broken down and cannot be transported to the shop. Both the Concrete Plant and the

Aggregate Division have their own mechanics to look after their own equipment.

### **Conmac Western Industries**

The Union states that all of the work described above is roadbuilding work. In support of their position they point to the Roadbuilders Agreement. Article 2.01, in the relevant parts, reads:

2.01 This agreement shall apply to the construction and maintenance of and all work related to;

(1) Highways and Roads...

(12) preparation for and manufacturing or production or delivery of rock, sand and gravel aggregate, or ready-mix concrete for any of the above segments.

The Union acknowledges that parties to a collective agreement may bargain positions which are different than the scope of their agreement. As a result, the Board is not bound to the scope provisions of a collective agreement. However, the Union claims that the terms of the collective agreement describe the scope of the bargaining unit as defined by the parties. In this case, the collective agreement states that the “preparation for and manufacturing or production or delivery of rock, sand and gravel aggregate, or ready-mix concrete” is construction work. It is therefore the Union’s position that all of the work described above fits within the Roadbuilders Agreement and the Board should consolidate all of the certificates into the roadbuilders certificate.

The Union’s position is supported by the case of *Conmac Western Industries, a Division of Canfarge Ltd. v. International Union of Operating Engineers Local 955 et al.* (1981) Alta.L.R.B. 81-041. In this case, the Board had to determine whether the work of the employer fell within the Roadbuilders Agreement. The employer’s activities were very similar to the case before us. The Board described these at page 6:

The applicants activities, include the excavating of crushing, screening, and washing of gravel. The gravel so produced is utilized in the making of concrete, and asphalt. To this end the application has gravel crushers, both stationary and a mobile, a concrete plant, and an asphalt plant, as well as gravel pits. It produced 1.5 million tonnes of gravel in 1980. Generally he described the business operation as building roads, crushing gravel, producing concrete and asphalt. The roadbuilding was particularized as doing residential subdivisions - asphalt streets, concrete sidewalks and gutters, moving dirt.

After setting out the Heavy Construction and Roadbuilding scope from the registration certificate, the Board continued at page 8:

It is noted that Certificate 1-70 before the variance, and as defined by this Board excludes from the manufacture, production and delivery of rock gravel and sand aggregates and ready mix concrete “these employers who stock and sell components and materials only”.

Mr. Guy informed the Board that of the production of sand and gravel aggregates, 75% was used by the application in construction and 25% was used in ready mix concrete and of this 25% approximately 12 1/2% was utilized in outside sales of ready mix. 10% of the aggregate was sold in direct sales to others. In total sales dollars we were informed that 75% was earned in the construction business, and 25% was the percentage of ready mix and sand and gravel sales. 95% of the asphalt production was used by the applicant in construction.

The applicant maintains a service and repair facility - a shop - at Blackfoot Trail and Southland Drive. This shop, repairs, maintains, and services the approximately 1,000 pieces of equipment of the applicant utilized in its business operations. It is for the use of the applicant. Mechanics, welders, and others work not only in the shop but also out of the shop wherever the equipment being repaired or serviced is located. “Stationary or field shops primarily carrying out equipment maintenance or repair”, is an identifiable component of the Roadbuilders trade jurisdiction. The shop employees are considered to be employees in the applicant’s “aggregate division”.

Upon consideration of all of the evidence, the Board is satisfied that employer’s business operations, are such as to bring it with the trade jurisdiction, as set out in Certificate 1-70 as varied and the Board accordingly finds that this employer is affected by this registration certificate.

The Board in *Conmac* was satisfied that the work performed by employees in the “aggregate division” fell within the scope of the Roadbuilders Agreement. The “aggregate division” in *Conmac* is very similar to the “supply divisions” of Lafarge.

### **The Effect of Section 1(g)(i)**

The *Labour Relations Act*, under which *Conmac* was decided, contained no definition of “Construction”. The Board had free reign to determine what was, or was not, construction work. This is no longer the case. The Legislature, through the *Labour Relations Code*, has placed limits to the definition of “construction”. Section 1(g) of the *Code* defines Construction as:

*1 In this Act,*

*(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;*

Lafarge states that the work performed by employees in their supply divisions falls within the exception set out in s. 1(g)(i). It is Lafarge's position that these plants are engaged in the construction supply business. They produce or manufacture material and product for use in roadbuilding, general construction and house building. They do not actually construct anything. Lafarge states that the various plants come directly within the parameters of section 1(g)(i). These operations cannot, therefore, be included in the Roadbuilders certificate as they are not performing construction work.

Are the plant operations performing construction work? Do they fall within the exception of section 1(g)(i)? We received no argument as to what it means to be engaged in the "supplying, shipping or otherwise transporting" of supplies and materials or products within the meaning of section 1(g)(i). However, we are satisfied that "supplying, shipping or otherwise transporting" refers to the act of furnishing or producing supplies, materials or products to, or delivery at, a construction project. The material or product is being provided to retail customers, rather than simply for in-company use. "Supplying," therefore, takes in not just warehousing and shipping, but production of the material itself.

None of the bargaining units in question, with the exception of perhaps the maintenance shop employees, perform any field work. The plants all produce and supply product. The majority of the material produced at the plants, with the exception of the Concrete Plant, is for use in roadbuilding. Under *Conmac* the Board would likely have been satisfied that the Villeneuve Wash Plant and Pit, the Soil Cement plants, and the Clover Bar Asphalt plant were performing work within the Roadbuilders certificate. The Concrete Plant would likely have been held to be outside the Roadbuilders certificate given that the vast majority of its product is used for general construction rather than roadbuilding or heavy construction.

We are of the opinion, however, that *Conmac* is no longer the law with respect to companies supplying, shipping or otherwise transporting product or material to or delivery at a construction project. *Conmac* has been superseded by the Code. "Construction" has now been defined statutorily. Section 1(g)(i) sets out a new exception which did not exist when *Conmac* was decided.

The Union's second argument is that even if *Conmac* is no longer the law, then there has been a fundamental change in Lafarge's operations placing all of Lafarge's operations within the construction industry. The Union presented little evidence indicating how, or in what fashion, Lafarge's operations have changed. We do not accept this argument.

Having regard to all of the above, we are satisfied that all of the plants in question fall within the parameters of s. 1(g)(i). They supply, furnish, or provide materials, some of which may be used for construction work. They are not, therefore, performing construction work within the scope of section 1(g). They cannot then be said to be performing roadbuilding work within the scope of the Roadbuilders certificate. The bargaining units as they currently exist as a result of the replacement certificates are appropriate for collective bargaining. The Union applications with respect to these employees are dismissed.

### **Maintenance Shop Employees**

The maintenance shop employees do not fall within the exception of section 1(g)(i) as they are not engaged in supplying, shipping or otherwise transporting of supplies and materials to or delivery at a construction project. Currently they are included in Certificate 18-92 with the Soil Cement Plant employees and the Cloverbar Asphalt Plant employees. Is this an appropriate unit?

It is well established law that we do not have to ascertain what “the appropriate unit” is for collective bargaining. Rather, this Board must be satisfied that the unit in question is “an appropriate unit” for collective bargaining. The factors the Board looks at in making this determination have been set out in many cases and in Board Information Bulletin #9. Some of these factors include the community of interest with other employees; bargaining history; nature of the employer’s organization; viability of the bargaining structures, and; the avoidance of fragmentation of the bargaining unit.

We were presented with no evidence to suggest that the present bargaining unit for the shop employees is not an appropriate unit for collective bargaining. The employees work on all types of equipment for Lafarge. They are not restricted to working on just the roadbuilding or heavy construction equipment. The large majority of their time is spent in the shop. They are separated from employees performing roadbuilding and heavy construction work. There is little interaction or integration between the two. We were presented with insufficient evidence to support a change in bargaining units. In light of all of the above, we are satisfied that shop employees should be included in Certificate 18-92. The unit is an appropriate unit for collective bargaining. The Union’s applications are dismissed.