

CONSTRUCTION vs. NON-CONSTRUCTION

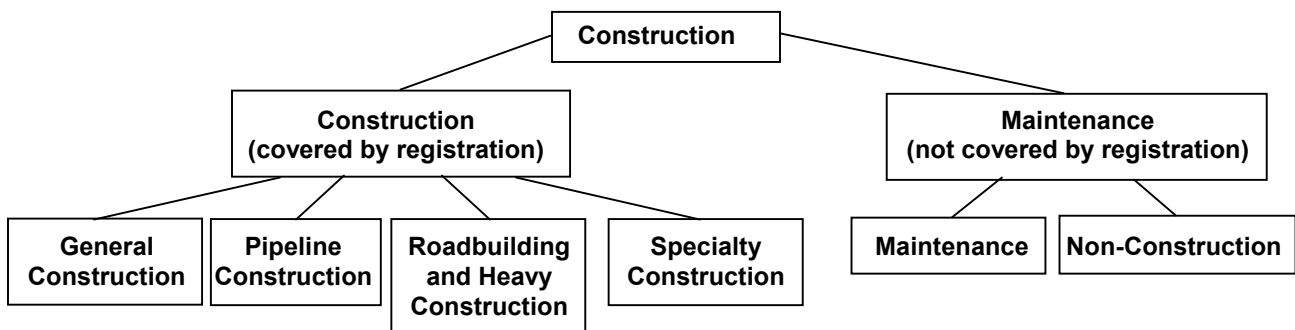
INTRODUCTION

The [Labour Relations Code](#) defines construction as:

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;

While the definition appears simple, its application is not. Labour relations in the construction industry is governed by the registration provisions of the Code. See: [[Construction Registration, Chapter 25\(b\)](#)]. The Code indicates maintenance work is not a part of construction and is therefore not governed by registration. [Information Bulletin #11](#) also indicates the Board recognizes two kinds of maintenance work: maintenance and non-construction. The result is the following structure:



This chapter examines:

- how to tell the difference between construction and non-construction work;
- the definition of maintenance work and non-construction work; and
- appropriate bargaining units for maintenance and non-construction work.

CONSTRUCTION vs. NON-CONSTRUCTION WORK

Generally speaking, one differentiates construction, maintenance and non-construction as follows:

- **Construction** is the creation of a new facility or an addition to a facility.
- **Non-construction and Maintenance** is work on an existing facility to keep it in repair and is not the creation of a new or expanded facility.

Two Board decisions address the difference. In *IBEW 424 v. CASCA Electric Ltd.* [1991] Alta.L.R.B.R. 227, the Board found that the replacement of a tailing pond was construction work (and not maintenance work, as one might think) because it entailed building the pond and related piping and structures. Further, the Board noted the tailings pond may expand the capacity of the plant and, if so, this too is indicative of construction, not maintenance. This is consistent with *CLRa v. IUEC 122 et al.* [1997] Alta.L.R.B.R. 354, where the Board found modernization that enhanced or improved the capacity of an elevator was construction work, not maintenance. Expansion of capacity is, however, not necessary for the work to be construction. For example, the replacement of an entire processing plant (without any expansion of capacity) would not be maintenance, but rather construction.

In *IBEW 424 v. CASCA Electric Ltd.*, above, the Board enumerated several principles it used to determine whether work was construction or maintenance:

- the context of construction collective bargaining guides the interpretation of the words in the definition of construction;
- the wording of the collective agreement may be a tool in determining where the work fits, but is not compelling;
- the Board will consider the scope of the work in question compared to the overall project being undertaken, the nature of the work itself, the context within which it is performed, the extent, time and cost of the work and its impact on the resultant product;
- increased capacity, while a factor to consider, is not necessary to a finding that work on an existing structure or building is construction work;
- maintenance work can include contract or long-term maintenance (like the regular examinations and service...), turn-around or shut-down maintenance, demand maintenance as a result of breakdown... and some service or repair work, depending upon the context.

Generally speaking, the following is true:

- **Maintenance:** The replacement of significant equipment (and work related to this activity) where there is no increase in capacity or enhancement of function is normally maintenance work. An exception may be the replacement of an entire facility with no increase in capacity which may be more accurately characterized as construction.
- **Construction:** The replacement of significant equipment (and work related to this activity) where there is an increase in capacity or enhancement of function is normally construction work. Also, the replacement of an entire facility with or without an increase in capacity may be construction work.
- **Context:** It is important to examine not just the work in question, but the context in which it is being performed. What is the overall purpose of the work and what is the scope of the overall project? What is the nature of the company doing the work?

MAINTENANCE & NON-CONSTRUCTION WORK

It is often difficult to tell the difference between maintenance work and non-construction work. This section summarizes the key features of each type of work.

Maintenance Work

Maintenance work is defined as large-scale plant turn-around work. For example, an employer may close a pulp mill and bring in a contractor(s) to complete a major overhaul or replacement of equipment. Maintenance work also includes long-term maintenance contracts. This sort of work is often referred to a “Big M” maintenance. Maintenance contractors often (but not always) employ several trades (e.g., operating engineers, ironworkers, labourers, pipefitters) that work together to complete the turn-around.

Non-Construction Work

Non-construction work (or “small M” maintenance) is defined as general repair work and maintenance outside of the scope of a major plant shutdown. For example, an employer may bring a contractor in to repair a blown power panel. The contractor in this circumstance often specializes in a single trade (e.g., electrical work).

Differentiating Between Maintenance and Non-Construction

Generally speaking, the following is true:

- **Maintenance:** Significant facility repair and upkeep (e.g., replacing equipment or facilities) where there is a plant shutdown is normally maintenance work. Also ongoing repair and upkeep where there is a long-term service contract is normally maintenance work.
- **Non-construction:** General upkeep and repair is normally non-construction work unless there is a long-term maintenance contract
- **Context:** It is important to examine not just the work in question, but the context in which it is being performed. What is the overall purpose of the work and what is the scope of the overall project? What is the nature of the company doing the work?

APPROPRIATE BARGAINING UNITS

It is the Board’s policy to certify construction employees separately from employees performing maintenance or non-construction work. This is because bargaining units must be appropriate for collective bargaining. Bargaining in construction occurs under registration while bargaining in maintenance and non-construction does not. Consequently, a single employer employing a single trade may have up to three certificates, such as:

1. General Construction Electricians
2. All Maintenance Electricians
3. Non-construction Electricians

The Board has adopted standard bargaining unit policies for construction employees based on craft lines. See: [[Information Bulletin #11, Bargaining Units for The Building Trades](#)]. This is necessary because registration bargaining occurs along craft lines. Craft divisions also influence unionization and training in the construction industry.

It is less clear if craft-based units are appropriate for maintenance and non-construction work. Craft-based units allows employees to bargain through their craft unions. It also creates many units in one workplace (imposing a heavy bargaining burden on employers) and can result in jurisdictional disputes. The Board's policies for maintenance and non-construction units tries to strike a balance between the interests of employees and employers.

Maintenance bargaining units are craft-based. This reflects that most maintenance employers have structured their operations on a craft-basis so as to best access union hiring halls. The Board certifies maintenance contractors on a craft-by craft basis (e.g., All Maintenance Millwrights). The various eligible trades are the same as those for construction units outlined in Information Bulletin #11.

As outlined above, many employers performing non-construction work are single-trade subcontractors. Generally, the Board certifies these contractors on a craft basis (e.g., Non-Construction Electricians). The non-construction formulation is also often used for commercial fabrication shops, service, repair and specialty trade contractors. See: [[Information Bulletin #11, Bargaining Units for The Building Trades](#)].