

#11 BARGAINING UNITS IN THE CONSTRUCTION INDUSTRY AND BUILDING TRADES

I. INTRODUCTION

This Bulletin describes the Board's bargaining unit policies that affect building trade employees and their employers. It was initially 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. This Bulletin also addresses changes to Part 3 of the *Labour Relations Code* that took effect on February 10, 2021 and will affect certification applications and bargaining rights in the construction industry. The objective of this revised Bulletin is to provide an overview of the legislative changes. The Board will continue to update this Bulletin as decisions interpreting these new provisions are released.

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

II. CONSTRUCTION VERSUS NON-CONSTRUCTION WORK

Part 3 of the *Code* applies to employers and employees engaged in the construction industry: section 163(1).

Section 1(g) of the *Labour Relations Code* defines “construction” as follows:

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, except in Divisions 1.1 and 8 of Part 3.

As of July 29, 2020, maintenance work is no longer excluded from the definition of construction for the purposes of Division 1.1 and Division 8 of Part 3 of the *Code*. Division 1.1, which came into force on February 10, 2021, addresses how unions obtain and consolidate bargaining rights in construction and maintenance (which is the focus of this Information Bulletin). Division 8 of Part 3 addresses collective agreements relating to major construction projects. Maintenance work remains excluded from the definition of construction in relation to the remaining Divisions of Part 3, including those dealing with the registration bargaining system.

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.

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 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 scope of the work or project;
- 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.

It is the Board's policy to certify construction employees in separate bargaining units from non-construction employees.

The Board previously adopted standard bargaining unit policies for construction employees based on craft lines because craft divisions influence training and unionization in the construction industry. In addition, registration bargaining occurs on craft lines. Those policies are impacted by the recent changes to Part 3 as of February 10, 2021, whereby “all employee” bargaining units in a sector or in maintenance shall be considered a unit appropriate for collective bargaining outside of registration bargaining.

III. SECTORS

The Construction Industry Labour Relations Regulation under the Labour Relations Code divides 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.

A sector is a portion of the construction industry defined by the type of construction activity performed.

In the registration bargaining system, the Board certifies construction employers that have

formed employer organizations on a sector-by-sector basis. While registrations are province-wide, more than one trade union may be grouped together for the purposes of one registration application or certificate (see Part IV, below). *See: Construction Industry Labour Relations Regulation; IUOE Local 955 v. Foundation Co. of Canada et al. [1990] Alta.L.R.B.R. 40.*

A union operating outside of Registration under Division 1.1 (see Part V, below) can apply to be certified as the bargaining agent for an all-employee or trade-specific bargaining unit with respect to employees employed in a sector.

The Board's standard trade-specific bargaining units listed by sector may be found in Part VII, below.

IV. REGISTRATION BARGAINING

Division 2 – Division 6 of Part 3 of the *Code* sets up a unique system of coordinated bargaining in the construction industry which is known as registration bargaining. Much of the industry bargains under registration.

Registration bargaining, which occurs separately within each sector identified in Part III, above, is described in more detail in Information Bulletin 12.

Unions subject to registration within a sector may be certified as the bargaining agent for trade-specific bargaining units in a sector **or** in maintenance work within a trade jurisdiction, but they are precluded from applying for certification of an all-employee unit with respect to that sector or maintenance work: see section 163.1(2)(b), section 163.1(3) and section 163.1(5).

V. BARGAINING OUTSIDE OF REGISTRATION

Outside of registration, as of February 10, 2021, either all-employee or trade-specific bargaining units are considered appropriate for collective bargaining in a sector or in maintenance work.

Unions that are not subject to registration within a sector may apply to the Board to be a certified as the bargaining agent for an all-employee bargaining unit in a sector **or** in maintenance work **and** in more than one trade jurisdiction: see section 163.1(2)(a).

Unions that are not subject to registration may also be certified as the bargaining agent for trade-specific bargaining units in a sector **or** in maintenance work within a trade jurisdiction: see section 163.1(2)(b).

The Board may, where appropriate, exclude a trade jurisdiction from an all-employee bargaining unit if employees employed in a trade jurisdiction in a sector or maintenance work are represented by another bargaining agent: see section 163.1(3) and 163.1(5).

The “build up” principle also applies to certification applications for all-employee units. Section 163.1(6) of the *Code* allows the Board to refuse to certify an all-employee unit if it determines, based on what is reasonably known or anticipated at the time of the application, that substantial or imminent change in composition of the bargaining unit applied for is such that it would not be representative of the employees in the applied-for unit. The build-up principle does not apply to trade-specific bargaining units: see section 163.1(7).

Consolidation Applications

The *Code* allows employers or unions to apply to the Board for an order consolidating existing trade-specific bargaining rights in a sector or maintenance work into an all-employee bargaining unit. In accordance with section 16(6) of the *Code*, notice of a consolidation application that identifies the nature of the application and the permissible scope of involvement for those receiving notice will be provided to any party that, in the opinion of the Board, may be affected by the application. Affected parties who receive notice will only be permitted to comment on relevant legislative issues arising from the application.

Consolidation applications may only be made if the consolidating bargaining agent represents employees in at least three trade jurisdictions employed by an employer in a sector or in maintenance work: see section 163.2(3). Consolidation applications may only be made after the expiry of the first collective agreement(s) between the consolidating bargaining agent and the employer that are subject to the application for consolidation: see section 163.2 (4). Where it is appropriate to do so, the Board shall exclude trade-specific bargaining units represented by a bargaining agent other than the consolidating bargaining agent from the consolidation application and certificate: see 163.2(5).

Where one or more collective agreements is in force with respect to a consolidated bargaining unit at the time a consolidated certificate is issued, the Board may terminate or amend a collective agreement, or declare that one or more collective agreements continue in force: see section 163.3(2).

If employees in a trade jurisdiction are not represented by a union at the time a consolidation application is made, the Board shall conduct a representation vote to determine whether those employees wish to be represented by the consolidated bargaining agent: see section 163.4.

Subject to sections 32-40 of the *Code*, which relate to certification applications generally, where an all-employee certificate or consolidated certificate has been granted, a trade union subject to registration is precluded from applying to be certified as the bargaining agent for a trade-specific bargaining unit in respect of a trade jurisdiction that is included in an all-employee or trade-specific bargaining unit: see section 163.5.

VI. CONSTRUCTION INDUSTRY BARGAINING UNIT PRINCIPLES

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 VII lists the Board's standard trade-specific 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.
- For a list of trades currently subject to registration, see Information Bulletin 12.

VII. STANDARD TRADE-SPECIFIC CONSTRUCTION BARGAINING UNITS BY SECTOR

The Board considers the following trade-specific construction industry units appropriate for collective bargaining in each sector:

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

VIII. MAINTENANCE BARGAINING UNITS

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

Effective July 29, 2020, maintenance work is included in the definition of construction under section 1(1)(g)(ii) of the *Code* for the purposes of Division 1.1 and Division 8 of Part 3 of the *Code*. Prior to these amendments, all maintenance work was excluded from the definition of construction.

As a result of the amendments that came into force on February 10, 2021, bargaining rights for employers and employees performing “maintenance work” while “engaged in the construction industry” is now governed by Division 1.1 and the rules and policies discussed above in Parts IV and V of this Bulletin, such that either all-employee or trade-based units are considered appropriate for collective bargaining.

Many other employers perform maintenance-type work – general upkeep, service and repair

outside of a plant shutdown or long-term maintenance contract – which the Board has categorized as “non-construction”. The Board traditionally accepts non-construction units spanning all crafts, although craft-based non-construction units could be appropriate for single trade subcontractors discussed below.

IX. 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.

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.

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.

X. 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

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