Ontario

ONTARIO LABOUR RELATIONS BOARD

OLRB Case No: **2077-20-R**

Labourers' International Union of North America, Local 625, Applicant v Carpenters' District Council of Ontario, United Brotherhood of Carpenters and Joiners of America, **1603878 Ontario Limited o/a Sterling Ridge General Contracting Inc.**, and Sterling Ridge Infrastructure Inc., Responding Parties

BEFORE: Jack J. Slaughter, Vice-Chair

APPEARANCES: Joshua Mandryk and Bill Moreland appearing for Labourers' International Union of North America, Local 625; Kathryn Carpentier and Shawn Ramey appearing for Carpenters' District Council of Ontario, United Brotherhood of Carpenters and Joiners of America; Gino Morga appearing for 1603878 Ontario Limited o/a Sterling Ridge General Contracting Inc., and Sterling Ridge Infrastructure Inc.

DECISION OF THE BOARD: September 1, 2022

1. This is an application filed by Labourers' International Union of North America, Local 625 ("Local 625" or the "Labourers") pursuant to section 166 of the *Labour Relations Act, 1995,* S.O. 1995, c.1 as amended ("the Act") for a determination of what sector of the construction industry certain work performed at the Lou Romano Water Reclamation Plant in Windsor falls into. The responding parties are Carpenters' District Council of Ontario, United Brotherhood of Carpenters and Joiners of America (the "CDCO" or the "Carpenters"); and 1603878 Ontario Limited o/a Sterling Ridge General Contracting Inc**.**, and Sterling Ridge Infrastructure Inc. (the "Employer"). This application was filed on December 9, 2020.

2. The Board conducted a consultation in this matter on June 1, 2022. All parties attended and were represented by counsel. The Board afforded the parties a full opportunity to make submissions, and no party indicated that it wished to call any oral evidence. The parties provided the Board with extensive and detailed written materials, supplemented by thorough oral representations. The Board finds that it is able to come to a final determination herein based on the materials and submissions before it without the need to hear oral evidence. While the parties raised numerous issues and sub-issues within their comprehensive oral submissions and extremely lengthy written and documentary materials, in the interests of expedition and efficiency, the Board has limited its exposition and analysis herein to the salient issues necessary to the determination of the sector dispute before it.

THE WORK IN DISPUTE

3. No consultation conference was held in this matter. Instead, the parties proceeded directly to a consultation. At the consultation, the parties made final argument. Prior to the final argument, they had filed extensive briefs and supporting materials. While the general nature of the dispute may be simply and quickly defined, there are many aspects and nuances that were contested by the parties and which require closer examination.

4. The overall issue is within which sector of the construction industry the following work falls:

> The construction of a Site Drainage Pumping Station at the Lou Romano Water Reclamation Plant ("LRWRP") in Windsor, Ontario (the "Project").

5. The Labourers and the Employer assert that the Project falls either into the heavy engineering sector of the construction industry, or alternatively into the sewers and watermains sector. On the other hand, the Carpenters contend that the Project lies within the industrial, commercial and institutional ("ICI") sector.

6. The Project was tendered out by the City of Windsor. The successful bidder was SLR Contracting Group Inc. ("SLR"). The Employer claims that the work was actually undertaken by its heavy civil

corporation Sterling Ridge Infrastructure Inc. ("SRI") and not its general contractor corporation Sterling Ridge General Contracting Inc. ("SRGC").

7. While the details of the Project will be scrutinized more intensely below, it is worthwhile setting out how the Project is described in objective documents created during the process of awarding and performing the work.

8. Paragraph 1 of the contract between SLR and the City of Windsor entered into on January 21, 2019, stipulates that it is with respect to "a site drainage pumping station at Lou Romano Water Reclamation Plant, in the City of Windsor". Three things are immediately significant. Firstly, the contracting entity on the employer side is SLR and not SRI. Secondly, the site drainage pumping station is not down the road from the LRWRP, or near the LRWRP, but at the LRWRP. Thirdly, the list of work set out at Statement "D" includes the following: excavation and backfill; sheet pile excavation protection system; concrete work; reinforcing steel; structural steel; mechanical work; miscellaneous metals; electrical; instrumentation and control; and pre-start health and safety review.

9. The relevant Ontario Ministry of Labour Notice of Project Form describes the Project as "New Cast-In Place Pump Station for Site Drainage".

10. Therefore, the Board is dealing with a pumping station, but a pumping station on the grounds of a water reclamation plant specifically placed there for the identified purpose of site drainage.

OVERVIEW OF THE COMPETING SECTORS

11. Before undertaking a detailed analysis of the Project and determining into which sector it falls, it is useful to take a broader view of the competing sectors and how they fit into the overall scheme of construction industry collective bargaining in the Province of Ontario.

12. The Carpenters submitted the following authorities: *Matthews Contracting Inc.,* [1993] OLRB Rep. December 1332 ("*Matthews*"); *Corporation of the City of Sault Ste. Marie,* [2002] OLRB Rep. September/October 870 ("*Sault*"); *Asco Construction Ltd.,* 2015 CanLII

6571 (ON LRB) (February 2, 2015) ("*Asco*"); *Duntri Construction Ltd.,* [1996] OLRB Rep. June 399 ("*Duntri*"); *Interpaving Limited*, 2001 CanLII 19248 (ON LRB) (October 4, 2001); *Magine Inc.,* 2004 CanLII 16540 (ON LRB) (March 4, 2004); *PCL Constructors Canada Inc.,* 2010 CanLII 78733 (ON LRB) (December 30, 2010); *UCC Group Ltd*., 2013 CanLII 24964 (ON LRB) (May 2, 2013); and *Avery Construction Limited Transportation Services,* 2012 CanLII 3627 (ON LRB) (January 30, 2012) ("*Avery*").

13. Labourers provided the following additional case law: *The Heavy Construction Association of Toronto*, [1973] OLRB Rep. May 245 ("*HCAT*"); *Dufferin Construction Company*, [2001] OLRB Rep. March/April 323 ("*Dufferin*"); *Steen Contractors Limited,* [1989] OLRB Rep. November 1173 ("*Steen*"); *Extreme Concrete,* 2017 CanLII 23170 (ON LRB) (April 19, 2017); *Hydro One Inc*., 2017 CanLII 82348 (ON LRB) (November 28, 2017).

14. The Employer did not provide the Board with any further jurisprudence.

15. First, the Board will examine the heavy engineering sector. In many ways this sector is like the fourth line center on the 1970s Guy Lafleur Montreal Canadiens or the 1980s Wayne Gretzky Edmonton Oilers. In other words, while often overlooked, it is still a key part of the success of the construction industry.

16. In comparison with the other enumerated sectors of the construction industry, there are relatively few decisions of the Board that illuminate the work falling within this sector. The seminal case is the Board's accreditation decision in *HCAT, supra*, where the Board made the following observations:

> 14. An examination of the enumerated sectors in clause (e) of section 106 leads to the conclusion that for all but one of the sectors listed the names given to these divisions of the construction industry relate to the use which is ultimately made of the construction. At first this may appear to be somewhat of a puzzle in that the connection between the use of the construction and the work characteristics may not be obvious. Upon examination, however, it becomes clear that the use that is ultimately made of the construction will to a large extent determine the task of the work to be

performed at the construction site. The task in turn will have certain characteristics which make that project distinguishable from other types of construction. Thus, each of the sectors enumerated, by focusing on the different end uses of the construction, distinguishes one type of construction from other types of construction on the basis of peculiar tasks which are common to that type of project. The work characteristics which distinguish one sector from the other sectors of the construction industry may be shown in terms of the type of problems to be dealt with at the job sites, the materials used, the relative importance of various specification, the variety of skills and trades, and certain characteristics is not to be thought of as exhaustive, but as examples of particular characteristics which differ between the various sectors enumerated in the *Act*.

15. Having given a meaning to the test for determining sectors on the basis of work characteristics we can now turn to use this meaning as a tool for obtaining the criteria which separate one sector from another sector of the construction industry. However, as noted above there is one sector which unlike the other sectors enumerated in the *Act* does not refer to the end use made of the construction in that sector. This is the heavy engineering sector, which is the subject matter of this application. The name of this sector comes from the view that the division of the construction industry with which it is concerned has distinct peculiarities. As the name implies the problems faced in such construction projects are primarily engineering problems as distinct from design or architectural problems. Thus, for instance, these are projects in which it is more important that they serve their intended function rather than be attractive. The other characteristic of construction in this sector is that it involves the use of "heavy equipment." That is equipment which is capable of lifting, for example, heavy steel or concrete beams or equipment that is capable of moving huge amounts of earth, stone or concrete. Perhaps the classic example of a heavy engineering project is the construction of a large bridge.

16. However, if we are to define the heavy engineering sector in terms of the emphasis of engineering problems and the use of large scale equipment, we are confronted with the problem that these

> two characteristics are not sufficient to distinguish projects which clearly fall into the other enumerated sectors. Thus, for instance, the construction of a large refinery, steel mill, power station or sewage settling basin may have these same characteristics. We are thus faced with the potential conflict that any project in any of the other sectors can arguably be placed in the heavy engineering sector if the problem is an engineering problem and the equipment used is a large scale or heavy equipment. Clearly section 106(e) should not be interpreted in a way to allow such an ambiguity or uncertainty as to the meaning of the term "sector." The problem, however, is not difficult to overcome. As pointed out earlier, the other sectors are defined in terms of the use ultimately made of the construction. This has the clear advantage of determining the sector at the earliest stages of the project. Thus any uncertainty as to whether the project falls in one sector or another can be removed even before the work has commenced at a job site. The removal of such uncertainty is, of course, a desirable goal in labour relations and indeed the legislature in its wisdom has seen fit to remove the uncertainty from the definition by labelling the other sectors with names designating the end use of the project.

17. Not everything the Board said in *HCAT, supra*, has stood the test of time. When that case was decided, tunnels were included in the sewers and watermains sector, but that is no longer the case. Furthermore, since the Board's decision in *Sault, supra*, the Board has moved away from a strict "end use" analysis of sector, and now also considers work characteristics and bargaining patterns. Nevertheless, *HCAT, supra*, remains the bedrock upon which any Board analysis of the meaning of the heavy engineering sector must be constructed.

18. What does it tell us? First and foremost, the sector is characterized by the use of "heavy equipment" of the type that "is capable of lifting, for example, heavy steel or concrete beams or equipment that is capable of moving huge amounts of earth, stone or concrete". The sector also applies where "the problems faced in such construction projects are primarily engineering problems as distinct from design or architectural problems". However, the Board was cognizant that not all projects involving the use of heavy equipment fall within the heavy engineering sector. The Board was careful to distinguish the following types of projects which fall into the ICI sector: the construction of a large refinery, steel mill, power station or sewage

settling basin. The Board found that "end use" should be used to differentiate between these two sectors.

19. What types of projects has the Board found to be in the heavy engineering sector? There are not a great number of examples in the Board's case law, even though almost 50 years have elapsed from the release of *HCAT, supra*, in the year Secretariat completed his Triple Crown victory. *HCAT, supra*, stated that "the classic example of a heavy engineering project is the construction of a large bridge". The Board's jurisprudence has gone on to place the following work in the heavy engineering sector: *Ellis-Don Ltd.,* [1999] OLRB Rep. January/February 28 (bridges and approaches, subway and light rail construction*); Intrepid General Limited,* CanLII 68893 (ON LRB) (October 23, 2015) (culverts); *Reimar Construction Corporation o/a Reimar Forming and Construction*, CanLII 12555 (ON LRB) (March 8, 2016) (Locks 1 and 2 West of the Welland Canal); and *Aecon Construction Group Inc.,* 2019 CanLII 116861 (ON LRB) (December 3, 2019) (Kitchener-Waterloo Light Rapid Transit). In *Strabag Inc.,* 2007 CanLII 43628 (ON LRB) (October 16, 2007), the Board confirmed an award of tunnel construction work to the Labourers which was being done under the Heavy Construction Association of Toronto collective agreement, which had been incorporated into the Labourers' collective agreement with the Electrical Power Systems Construction Association ("EPSCA").

20. The heavy engineering sector is more concerned with function than form. As heavy engineering projects skew towards the use of heavy equipment and solving engineering problems, they tend to be "big jobs" in size and scope. For example, the collective agreement between Labourers' International Union of North America, Local 183 and the Heavy Construction Association of Toronto illustrates this, as it encompasses, *inter alia,* the following types of work: bridges, including pedestrian bridges, underpasses and overpasses; retaining walls (all types); all structures in connection with dams, docks, wharves and breakwaters; structural work on reservoirs; structures on transit systems (heavy rail or light rail) and cement lining of watermains. Other examples of heavy construction projects could include building port facilities and waterways, or creating earthen structures such as berms, beaches and open-pit mines.

21. The sewers and watermains sector has received more attention. The Board has differentiated it from the ICI and other sectors on numerous occasions. In *Asco, supra*, the Board stated that the "classic sewer and watermain function is conveying waste water from one place to another, including over topographical features where necessary". *Webster's New World Dictionary* defines a sewer as "a pipe or drain, usually underground, used to carry off water and waste matter". The same source defines a watermain as "a main pipe in a system of water pipes".

22. On more than one occasion, the Board has had to decide whether work is in the sewers and watermains sector as opposed to the ICI sector. This is hardly surprising. Sewers and watermains do not exist in a vacuum, but are built to serve the needs of ICI and residential buildings. Drawing the line between the ICI and sewers and watermains sectors is not always an easy exercise. Sector disputes tend to focus on structures at the periphery or intersection of ICI and sewers and watermains work. Examples of work falling on the sewers and watermains side of the ledger include: the work of installing storm sewers and manholes within the property lines and outside the perimeter of buildings at the General Motors stamping plant project in Oshawa (*Steen, supra*); a raw sewage pumping station (*Duntri*, *supra*); and most of the work pertaining to the construction of underground diversion vaults and holding tanks permitting a controlled release of Glycol for de-icing aircrafts at Lester B. Pearson International Airport (*Dufferin, supra*).

23. The ICI sector is the "star" sector of the construction industry, because it has its own special province-wide bargaining regime defined by the Act and because most sector disputes involve a determination of whether the work in dispute is or is not ICI sector work. The classic exemplars of ICI construction are familiar buildings. A car factory, a shopping mall, and a school are but three instances that readily spring to mind. However, ICI construction is not just about standard occupied buildings. For example, in *Avery supra*, the Board concluded that a Landfill Gas Management System located in the City of Sault Ste. Marie fell within the ICI sector. In *Marine Pipeline Construction of Canada Limited*, [1995] O.L.R.D. No. 4227 (October 26, 1995) ("*Marine Pipeline*"), the Board held that a "tie-in station" between pipelines involved an industrial process of heating, odorizing and changing the direction in the flow of gas, constituted work within the ICI sector.

24. The Board has also determined that the following work fell within the ICI sector rather than the sewers and watermains sector: an underground concrete water storage tank (*Matthews, supra*); the Bellevue Park Combined Sewage Overflow Tank (*Sault, supra*); the upgrade of the Leslie Street Sewage Pumping Station in Markham (*Asco, supra*).

25. Each sector determination is of course fact specific and must take into account the particular context of the work being performed. It is not enough to say simply that heavy equipment is being used; or that sewer connections are involved; or that work falls with the property line of an ICI building. The Board must take a holistic approach. In doing so, it will apply the three-fold test developed in *Sault, supra* – one of the very few things agreed upon by the parties in this case. The three factors the Board will consider herein, as panels of the Board have done in the 20 years post-dating *Sault, supra*, are work characteristics, bargaining patterns and end use.

End Use

26. The most important factor is end use. It will be a rare project, if any, where the sector within which the project falls will differ from its end use. On occasion, the line may be close, but a call has to be made.

27. In this case, the name of the project points distinctly to its end use. This is a "Site Drainage Pumping Station". The purpose of the station is to drain the LRWRP site of excess water. The LRWRP is a water treatment facility. The Board has consistently said that work in the ICI sector includes work that is part of a system of sewage treatment and water pollution control: *Matthews, Sault, Asco, supra.* The Site Drainage Pumping Station is part of the LRWRP system of sewage treatment and water pollution control that is located within the boundaries of the LRWRP itself. Its end use logically and practically cannot and should not be separated from the end use of the LRWRP.

28. This conclusion is reinforced by a comparison with the purposes of the other sectors, allowing that "heavy engineering" is more of a descriptive term than an end use. The Site Drainage Pumping Station in no way resembles any of the classic forms of heavy engineering construction. It is nothing like a bridge, dam, subway tunnel, seaway or

canal. Nor is the sewer and watermain end use compelling. The Site Drainage Pumping Station is not a sewer or watermain, and does not convey waste water from one place to another, including topographical features where necessary (see *Asco, supra,* at paragraph 49). Rather it remediates "plant flooding during heavy rainfall events" at the LRWRP in the words used by the City of Windsor to describe its function.

29. Simply put, the Site Drainage Pumping Station has been constructed on the grounds of a water treatment plant to alleviate flooding problems at that plant. As such it is part and parcel of a system of sewage treatment and water pollution control and falls within the ICI sector of the construction industry.

30. Therefore, the end use factor supports a finding that the Project falls within the ICI sector.

Work Characteristics

31. The parties, and in particular the Labourers, spent considerable physical and temporal resources in addressing this criterion. However, the Board finds that it can be dealt with in a concise manner.

32. The Site Drainage Pumping Station is a concrete building that includes above-ground and below-ground elements.

33. In the General Requirements section of the tender documents, the following work summary appears:

> Construction of a Plant Drainage Pumping Station including new sewage pumping equipment, process piping, gates, misc. metals, excavation protection system and chamber work, and all associated civil, structural, mechanical and electrical and instrumentation work.
>
> Coatings to walls, ceilings, and floors to the interior of the Plant Drainage Pumping Station.

34. The Board disagrees with the Labourers' assertion that the "problems encountered on the project are primarily engineering problems". On the contrary, the relevant documents identify elements clearly associated with ICI construction: mechanical work; electrical

work; and coatings to walls, ceilings and floors. These elements might not be as extensive in dollar or percentage amounts as they were in *Asco, supra*, but they are clearly not elements found in typical heavy engineering and sewers and watermains projects.

35. From the documentary evidence before the Board, it appears that the heavy equipment used consisted of the standard excavating equipment one would find on almost any ICI, heavy engineering or sewers and watermains project. No special equipment or specific engineering problem has been identified that would take the Site Drainage Pumping Station out of the ICI sector and into the heavy engineering sector. While no doubt there is work that could be attributed to either the ICI or the sewers and watermains sector, in that Site Drainage Pumping Station is agreed to be at the interface between LRWRP and the City of Windsor sewer system, there exists significant work that points directly at the ICI sector: electrical work; mechanical work; instrumentation work and coatings work.

36. The presence of mechanical, electrical, instrumentation and coatings work brings into play the work of trades who work on ICI projects rather than heavy engineering or sewers and watermains projects and is an indicator that the work falls within the ICI sector: *Marine Pipeline, Avery, Asco, supra.* Although the Labourers urged the Board to separate out what the Labourers said were minor aspects of ICI work, the Board finds that the ICI elements are not minor in nature and are integrated into the Project. Absent compelling and exceptional factors which are not present in this case, the Board treats a construction project as falling within a single sector of the construction industry, a treatment which is responsive to industry concerns about the need for consistency and predictability in the building and tendering process: *Avery*, *supra*; *West York Construction Ltd.*, [1983] OLRB Rep. December 2132 ("*West York*"); *Yukon Construction Inc.*, [2004] OLRB Rep. September/October 1001; *Hermanns Contracting Limited,* 2018 CanLII 95128 (ON LRB) ("*Hermanns Contracting Limited*"); *C.S. Bachly Builders Limited c.o.b. as Bachly Construction*, 2021 CanLII 115257 (ON LRB).

37. The Labourers also argue that the Board should consider under this criterion that "the work was bid exclusively by a group of contractors that specialize in these types of heavy engineering projects". However, the identity of the contractors bidding a project is something that speaks

more of bargaining patterns rather than work characteristics. Therefore, it will not be dealt with here but rather will be discussed in the next section.

38. For the reasons given above, the factor of work characteristics also favours a finding that the Project falls within the ICI sector.

Bargaining Patterns

39. An important starting point for this discussion is the analysis of how this criterion is to be applied, which analysis is found in *Asco, supra*, at paragraphs 33 and 34:

> 33. It is important to note that this case deals with the dividing line between the ICI and the sewer and watermain sectors. In *Sault Ste. Marie, supra*, in its discussion of how the bargaining patterns criterion would apply to the ICI sector, the Board clearly differentiated the treatment of that sector from other sectors, given the history of province-wide bargaining and legislation governing the ICI sector. In that case, the Board found that the use of local bargaining patterns, history of union organizing and performance of work in the Toronto area in *West York supra*, a case relied upon by the GTSWCA and the Labourers, was misplaced in determining bargaining patterns applicable to the ICI sector. More specifically, the Board quoted with approval the following passage from *Armbro Materials and Construction Limited*, [1987] OLRB Rep. July 948:
>
> > 11. The concepts of area practice and geographic practice, which have been referred to before, find no basis in section 117(e). Similarly, there is no indication in either section 117(e) or section 150 that the Legislature intended to introduce the variable of "area practice" or "geographic area" into sectoral determinations. If such had been the case, the Legislature, in our opinion, would surely have included the words "area practice and geographic area" after the word characteristics in section 117(e). As was referred to earlier, the Legislature has recognized differences based on geography in the certification and accreditation provisions in the construction industry by specific statutory language.

> 12. In *Steen Contractors Limited,* the Board appeared to indicate that different trades could give rise to different sectoral determinations. There is nothing in sections 117(e) and 150 which indicates that the Legislature intended to fractionate sectoral determinations in this way. In determining appropriate geographic areas under the certification provisions of the Act, the Board contemplated (see, for example, *M. Sule Construction Ltd.,* [1962] OLRB Rep. Nov. 251 and *Welcon Construction Limited,* [1962] OLRB Rep. Dec. 379) and rejected arguments that different trades whose local trade unions had different geographic jurisdictions ought to have different geographic areas for each trade. There exists one set and not several sets of geographic areas in Ontario. The one set of geographic areas applies equally to all trades. In our opinion, by analogy, labour relations would be best served by not making distinctions among the trades in sectoral determinations.

> 34. In other words, when deciding whether work at a project falls with the ICI sector or some other sector of the construction industry the Board is to consider province-wide bargaining patterns, and not merely area or geographic practice.

40. The Board's observations in *Asco, supra,* apply with equal vigour to the heavy engineering sector.

41. In *West York*, *supra*, the Board commented as follows:

> 26. This is not to say that local area practices or local agreements will always be determinative. Most projects clearly fall within one sector or another, and a local practice or agreement cannot alter that fact. Accordingly, an agreement to regard a clearly ICI project such as a shopping plaza or a school as residential would not find much favour with the Board. Rather, it is only with respect to those relatively small number of projects which fall into the grey area" between the sectors that a widely accepted local practice or agreement might assist in deciding how the

> project should be characterized. We would caution, however, it is possible that for one reason or another other relevant factors might be persuasive enough to cause the Board to conclude that a local practice or agreement should not be followed. Each situation will have to be determined on the facts involved.

42. The net result of the decisions that have post-dated *West York, supra*, is that local bargaining patterns are not to be given effect unless they effectively constitute provincial practice: *Armbro, Sault* and *Asco, supra;* see also *Hermanns Contracting Limited*, *supra.*

43. The evidence adduced by the parties about bargaining patterns, although extremely voluminous, can be dealt with quite quickly, because most of it is not relevant.

44. The Labourers have two essential arguments. First, there is the "bidders' list argument". Second, the Labourers rely on extensive evidence about pumping stations performed all over the province.

45. Neither argument is persuasive. Firstly, the Board will address the bidders' list argument. Five contractors bid the Project. One of them, Oscar Construction Company Limited, was disqualified. That left four contractors that submitted valid bids: the Employer, FACCA Incorporated ("FACCA"), AMICO Infrastructures Inc., and Intrepid General Limited. None are bound to a unique heavy engineering agreement. All are bound to the Windsor Heavy Construction Agreement (the "WHCA Agreement"), which is a multi-sector agreement applying to the roads, sewers and watermains and heavy engineering sectors of the construction industry. Therefore, the fact they are bound to the WHCA Agreement is not definitive of sector. Furthermore, two of them are bound to the Carpenters' ICI Agreement: FACCA and Intrepid. Accordingly, the bidders' list is ambiguous at best.

46. The fact that three contractors aligned in interest with the Labourers (including FACCA, which is bound to the Carpenters but is not happy about it) say that they would have done the work under the WHCA Agreement if they had been successful does not demonstrate much of anything, and certainly is not a clear indicator of the sector. As noted above, the WHCA Agreement is a multi-sector agreement. At most this may be indicative of a local bargaining pattern, but the Board does not concern itself with local bargaining patterns other than in exceptional

cases where there is a strong local practice and no countervailing practice in other Board Areas, such as in *West York* and *Hermanns, supra.* That is not the case here.

47. The pumping station argument is also not persuasive. There is a very simple reason. The work in dispute here is not a general purpose pumping station. It is very specifically a "Site Drainage Pumping Station". Moreover, it is a site drainage pumping station located on the property of a "Water Reclamation Plant". In this regard, it is worth recalling an observation made by the Board in paragraph 37 of *Asco, supra*:

> In some of these cases, the work is at a water pollution control plant, which all parties agree is work within the ICI sector.

48. The same was true in *Sault, supra,* as noted in paragraph 64 thereof:

> 64. Does this change simply because the material being processed is sewage? The four parties to this proceeding, and the four cases referred to above, all accept that a sewage treatment plant is an industrial process and construction of such plants falls within the ICI sector. It treats waste water, and separates the most harmful pollutants from the water, producing clean or cleaner water to be returned to natural waterways and "sludge" which must be disposed of in some other fashion. Similarly, no party suggested that the sewer lines, particularly the intercept line, was anything but a sewer or that it fell in any sector other than the sewer and watermain sector. The question, then, is whether this tank is part of the sewer system or part of the sewage treatment system. I find that it is part of the sewage treatment system.

49. Although the Labourers do not make the concession they made in *Sault* and *Asco, supra*, in this case*,* the Board finds that based on those two decisions, the information provided by the Carpenters, and its own institutional expertise, that work performed at a sewage treatment plant is work within the ICI sector.

50. Having said that, none of the Carpenters' evidence about bargaining patterns speaks precisely to a "Site Drainage Pumping

Station" either. This particular station is a unique response to a specific problem. Perhaps the best analogy is to characterize it as an "upgrade" to the LRWRP. Upgrades to a waste water treatment plant fall in the ICI sector, as demonstrated by the Carpenters' evidence with respect to at least the following projects: Welland Wastewater Treatment Plant, 2015; Woodward Wastewater Treatment Plant, 2015; and Humber Wastewater Treatment Plant, 2016.

51. Therefore, bargaining patterns do not favour a finding that the Project falls into either the heavy engineering or sewers and watermains sectors. Considering that the Project is essentially an upgrade to a waste water treatment plant, bargaining patterns support the conclusion that the Project falls within the ICI sector.

CONCLUSION

52. The Board has reviewed the Project, and in particular the end use, work characteristics and bargaining patterns associated with it, in accordance with the Board's jurisprudence concerning sector disputes. An application of each and every one of the three criteria point to the conclusion that the construction of the Site Drainage Pumping Station at the Lou Romano Water Reclamation Plant in Windsor, Ontario is work within the ICI sector of the construction industry and the Board so finds. Accordingly, this application is hereby dismissed.

"Jack J. Slaughter"
for the Board