Saskatchewan
Labour Relations Board

UNITED ASSOCIATION OF JOURNEYMEN & APPRENTICES OF THE PLUMBING AND PIPEFITTING INDUSTRY OF THE UNITED STATES AND CANADA, LOCAL 179, Applicant v IMPACT MECHANICAL SERVICES LTD., Respondent

LRB File No. 146-22; May 25, 2023
Chairperson, Susan C. Amrud, K.C.; Panel Members: Shawna Colpitts and Laura Sommervill

For United Association of Journeymen & Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, Local 179:	Greg Fingas and R. Turner Purcell
For Impact Mechanical Services Ltd.:	Larry Seiferling, K.C. Gillian Fortlage, Student-at-Law

Certification application – Division XIII – Construction industry – Work performed by the plumbers/pipefitters falls within the construction industry – Work was not done to maintain an operating facility but to repair and restore systems that had ceased to function.

Certification application – Division XIII – Construction industry – Work performed by the plumbers/pipefitters was plumbing and pipefitting work.

Eligible voters – No evidence respecting work performed by employees other than four plumbers/pipefitters – No reason to expand list of eligible voters beyond those four employees.

REASONS FOR DECISION

Background:

[1] Susan C. Amrud, K.C., Chairperson: On September 9, 2022, the United Association of Journeymen & Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, Local 179 [“Union”] filed an application for bargaining rights, with respect to the following employees employed by Impact Mechanical Services Ltd. [“Employer”] within the Province of Saskatchewan:

> *All journeymen plumbers, steamfitters, pipefitters, welders, gasfitters, refrigeration mechanics, instrumentation mechanics, sprinklerfitters, and all apprentices and foremen and general foremen connected with these trades.*

The application was made pursuant to Division 13 (Construction Industry) of Part VI of *The Saskatchewan Employment Act* ["Act"] with respect to what the Union described as its standard bargaining unit in the construction industry.

[2] On September 9, 2022, at the request of Board staff, the Employer provided the Board with a list of three employees. A Notice of Vote was issued on September 13, 2022 that included those three employees as eligible voters. On September 14, 2022, the Employer provided the Board with a different employee list that added six more employees. Board staff sent this information to the Union, requesting a response. The Union immediately advised the Board and Employer's counsel that they objected to the six additional employees. Employer's counsel responded the same day, asking that the six additional employees be allowed to vote, adding, "we can deal with the list at a hearing". An Amended Notice of Vote was issued on September 15, 2022 that included those nine employees. In accordance with the Board's usual practice, given the Union's objection to the six additional names, the ballots that were returned remain sealed until a determination is made by the Board in this matter respecting who is actually an eligible voter. The employees on the first list were Phillip Gareau, Marcel Pellerin and Robert Burke ["the Pipefitters"]. The employees added on the second list were Jason Gillert, Andrew Bissky, Greg Holz, Ron Gilmour, Stillman Michel and Marc Beaulac.

[3] The Employer filed a Reply on September 19, 2022, and an Amended Reply on September 28, 2022. The Employer objects to a Certification Order being granted under Division 13, arguing that the work that was being done was maintenance not construction. In the alternative, they argued that more of their employees, in addition to the Pipefitters, should be entitled to vote.

Evidence:

[4] The work that the Pipefitters were doing for the Employer was done at the former Prince Albert Pulp Mill ["mill"]. The mill ceased operations in 2006 and was abandoned for several years. It was not properly shut down. It was dormant from 2006 to 2014. At some point it was purchased by Paper Excellence. In 2014, Paper Excellence hired the Employer to do what the Employer described as maintenance work at the mill site, for about 1½ years. The evidence did not indicate what this work entailed. The mill was then abandoned again until late 2021, when Paper

Excellence asked the Employer to help them get the mill ready to reopen. The first step in their reopening plan was to demolish part of the mill. Before they could proceed with the demolition work, the mill needed substantial improvements, as the mill was not fit for use.

[5] Gareau worked for the Employer at the mill from January 24 to September 23, 2022. He described the work he and the other Pipefitters did during that time. He testified that their work focused on three components of the mill and mill site: the fireline, bathrooms and roof drains.

[6] The fireline is an underground pipe that provides water to fight fires. The fireline suffered damage when it froze and cracked during the time the mill was abandoned. It became unusable. Gareau testified that he worked on repairing the fireline; they were continually finding and repairing leaks in it. It had been abandoned for so long and suffered such extensive damage that they were still finding and repairing leaks in it in September.

[7] There were no operating bathrooms in the buildings; they had become unusable when the pipes froze. The Pipefitters installed a temporary water and sewer system to get them operational again so people could come and work in the offices on site. This work continued until late August or early September, because there were multiple bathrooms to be repaired and made usable again.

[8] He also repaired roof drains that had filled with water, frozen and cracked. When the buildings started to be heated again in 2022, water leaked down inside the buildings from the damaged roof drains. This work started in February and continued through September.

[9] Gareau testified that he did this work with the other Pipefitters. On the odd occasion an apprentice millwright would assist them by handing them things, but the actual work was done by the Pipefitters. Occasionally the Pipefitters were split up to do roof drain repair, and they were assigned a partner so they were not working alone, but the partner was not doing the pipefitting work. Gareau testified that the work the Pipefitters were doing was plumber or pipefitter/sprinklerfitter work. The demolition work had not started when he was laid off, but they had started preparing for it.

[10] Pellerin worked for the Employer at the mill from January 6 to September 23, 2022. His description of the work performed by the Pipefitters was consistent with Gareau's. He had worked at the mill as a sprinklerfitter for 12 years before it closed in 2006. He testified that they discovered that the fireline was not capable of operating because of cracks they found when they attempted to pressurize it. The Pipefitters did work to repair the fireline. He spent more than half of his time

repairing roof drains. Paper Excellence wanted to start occupying the office building and using the bathrooms. He worked with Gareau and Burke to install a new, temporary water and sewer system. The intent was not to bring it back to what it was before; the intent was to provide a temporary system. They began doing work to prepare for the commencement of the demolition work. He testified that no millwrights helped him with his work.

[11] Burke worked for the Employer at the mill from December 21, 2021 to September 23, 2022. His description of the work performed by the Pipefitters was consistent with Gareau's and Pellerin's. Through the winter most of their work was repairing broken roof drains and broken pipes. This work also continued off and on into the summer, whenever more broken pipes or roof drains were found. Burke testified that their work on cracked and damaged roof drains was still ongoing when they left. It was not complete before this application was filed. They started working on repairing the fireline after the ground thawed. They made significant progress on it, but were not done. The three of them also worked with a crane operator to remove the barge from the effluent pond, and then the next day, to remove a pump that was not working from the pumphouse, so it could be sent to Saskatoon to be rebuilt. When leaks in the copper piping for the bathrooms in the office building were discovered, they put in new pipes to get the bathrooms working. This required them to also revamp the sewer system to run into holding tanks. They built a temporary water and sewer system. Repair and replacement of indoor plumbing was an enhancement of the existing system.

[12] The crew that worked on these tasks was the Pipefitters. The Pipefitters were hired to perform that work and no one else except Holz did plumbing and pipefitting work. If labour jobs resulted from their work, *e.g.*, cleaning up broken pipe, they might get millwright apprentices or labourers to do that work. He acknowledged that sometimes during the summer the Pipefitters did painting and grass cutting, but they only did that kind of work while waiting for approvals and material to do their primary work of plumbing and pipefitting. Toward the end of July and into August they did preparatory work for the demolition.

[13] The fourth witness for the Union was Mitchell Grenier, commercial business agent and organizer for the Union. Prior to his employment with the Union he was a plumber for 14 years and a steamfitter for 10 years. He explained what kind of work is done by plumbers and steamfitters/pipefitters, based on the course outlines established by the Saskatchewan Apprenticeship and Trade Certification Commission and taught at SaskPolytechnic [1].

[1] Exhibit U1: Plumber Course Outline 2022; Exhibit U2: Steamfitter-Pipefitter Course Outline 2021.

[14] The witnesses for the Employer were Roy Michel and Andrew Herbert, the co-owners of the Employer.

[15] Michel's background was as a machinist and millwright. He indicated that 90 percent of the Employer's work is millwright work, and most of it is maintenance. He described the kind of work that millwrights do, based on the course outline established by the Saskatchewan Apprenticeship and Trade Certification Commission and taught at SaskPolytechnic[2]. He indicated that in 2014 Paper Excellence hired the Employer to do what he called maintenance work on the mill site, while it was operating temporarily, but that work only lasted for about 1½ years. Then, in late 2021 or early 2022 Paper Excellence asked the Employer to help them get the mill ready to reopen. It was in a derelict state. They cleaned, painted and fixed frozen water and sewer pipes. As more heat went into the buildings, more breakage became apparent. This work was different than a normal maintenance contract in that it had no end date. The Employer did not have a written contract with Paper Excellence; they were assigned work on a daily basis. He agreed that the Pipefitters were repairing pipes, fixing toilets, repairing roof drains, repairing the fireline, and setting up a temporary water and sewer system but indicated that they were also cleaning, mowing, painting and snow clearing. He indicated that the Employer's task was to get the mill ready so Paper Excellence could bring more people onto the site. They needed to get the bathrooms working and bring the buildings back into a state so that people could inhabit them. Asked if he considered any of the work his employees were doing in 2022 not to be maintenance work, his answer was no, not before this application was filed. Even though his business card indicates that the Employer does pipefitting work, he indicated that they quit doing pipefitting work in Saskatchewan six or seven years ago. This evidence was at odds with his evidence that Holz, a pipefitter, is a regular employee of the Employer.

[16] With respect to demolition work at the mill, he acknowledged that the Employer successfully bid on the fibreline internal demolition. Although the work was intended to start at the end of July, issues unrelated to the Employer meant that the work did not start until November 1, 2022. On September 15, 2022, the Employer received an email from Paper Excellence[3] advising them that the demolition project was being delayed, and requesting that what it described as mill maintenance be curtailed. Michel indicated that this email led to a decision to lay off all but two employees who were working at the mill, including the Pipefitters. The two employees retained

[2] Exhibit E2: Industrial Mechanic (Millwright) Course Outline 2022.
[3] Exhibit E7.

were foremen. He agreed that there was still work to be done, but with no income coming from the job, layoffs were required. He indicated that the Pipefitters had the least amount of seniority with the Employer, so they were laid off. He did not offer them jobs elsewhere with the Employer because it was his understanding that they wanted to stay in Prince Albert.

[17] On October 13, 2022, Paper Excellence authorized the Employer to start mobilizing the crew and equipment for the fibreline demolition work at the mill but not to start the demolition work. On November 1st the Employer started the work with two crews of four (welder, millwright, apprentice millwright and labourer) and foremen. Michel indicated that the work to be done did not require pipefitters. He said he called back his regular employees because he thought they could do it safely and correctly. He noted that the job changed again after November 1st, when it was reduced to less than half the original bid. As of the date of the hearing only one crew of four employees was still employed there, and he estimated that by mid-December they would be done the demolition work and there would be no more maintenance work until spring.

[18] The Pipefitters testified that during the last week they were at work they started on the demolition work. Herbert testified that as soon as Paper Excellence found out they were doing it, they were told to stop. The work was removing tables and chairs, computers, lockers and ceiling tiles from the control room. It was not pipefitting work. The Employer had only asked them to do it to keep them busy. Herbert provided Daily Activity Charts[4] for the four pipefitters for one week (September 12th to 15th), but not for any of the other employees that the Employer argues were doing the same work. He agreed that the work that the pipefitters reported doing during that week was accurate. He testified that Stillman Michel is a millwright, while Gillert, Bissky and Beaulac are welders; none of them are qualified to work as plumbers or pipefitters.

Argument on behalf of Union:

[19] The Union argues that there are three issues to be determined by the Board in this matter:

1. Was the Pipefitters' work construction industry work within the meaning of Part VI, Division 13 of the Act?

2. Was the Pipefitters' work plumbing/pipefitting work?

3. Which employees should be included in the bargaining unit for the purpose of the tabulation of the vote?

[4] Exhibit E11.

Construction or maintenance:

[20] To make this determination, the Board must interpret the definition of "construction industry" in section 6-65 of the Act. For this purpose the Union relies on *United Association of Journeyman and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, Local 179 v Andritz Hydro Canada Inc.*[5] ["*Andritz Hydro*"] where the Board held:

> *[109] To determine whether the work falls under the construction industry definition the case law routinely considers the entire context: this includes not only the work in question, but also the overall purpose of the work and the scope of the overall project. The Board agrees with this approach. It is practical. It promotes consistency and predictable results. On this basis, the Board will proceed to consider the overall project.*

In *Andritz Hydro*, the Board held that while nothing was added to the system, the work involved "an extensive replacement of existing parts" such as to be reconstruction within the meaning of Division 13.[6]

[21] In *International Association of Heat & Frost Insulators and Asbestos Workers, Local 119 v AlumaSafway*[7] ["*AlumaSafway*"], the Board determined that work that enhanced the functioning of a facility, that was previously failing to operate properly, was appropriately classified as construction rather than maintenance[8]. It rejected the employer's argument (reiterated in this case) that the starting point for its analysis should be the terms of an agreement, rather than evidence as to the actual project.[9]

[22] The work at the mill involved the repair and demolition of parts of a non-functioning facility. This work falls within the definition of "construction industry", being reconstruction, repair, revamping and demolition. The restoration of a non-functioning facility is repair work that properly falls within the scope of the construction industry.[10] Applying these standards, the roof drain repair work and fireline work at the mill site are properly considered the type of repair that is included in the construction industry.

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[5] 2021 CanLII 4217 (SK LRB); confirmed on reconsideration: *Andritz Hydro Canada Inc. v The United Association of Journeymen and Apprentices of The Plumbing and Pipefitting Industry of the United States and Canada*, 2021 CanLII 60994 (SK LRB); application for judicial review dismissed: *Andritz Hydro Canada Ltd. v The United Association of Journeyman and Apprentices of The Plumbing and Pipefitting Industry of the United States and Canada, Local 179* (1 September 2022) Saskatoon, QBG-SA-00719-2021 (Sask QB).
[6] At para 110.
[7] 2021 CanLII 72031 (SK LRB).
[8] At paras 104 - 105.
[9] At paras 73, 75.
[10] *Master Insulators Association of Ontario, Inc. v International Association of Heat and Frost Insulators and Asbestos Workers Local 95*, 1980 CanLII 864 (ON LRB); *International Association of Heat and Frost Insulators & Asbestos Workers v Inscan Contractors (Ontario) Inc.*, 1986 CanLII 1485 (ON LRB); *United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, Local Union 800 v Briecan Const. Limited*, 1989 CanLII 3476 (ON LRB).

[23] The work of the Pipefitters respecting the fibreline is properly considered demolition work; the primary consideration is that of contributing to the dismantling of a pre-existing facility.[11] Demolition work may also include work oriented toward the restoration of facilities that have ceased to function.[12] The Pipefitters spent substantial time on work that was not only connected to the demolition work, but necessary for its performance, including gathering equipment and material for the demolition project, setting up rigging and lifting wells and carrying out some demolition work.

[24] As such, the work of the Pipefitters is properly considered to fall within the construction industry. The reality of the work performed takes precedence over the Employer's choice in labelling itself. The Employer does not get to decide if this is maintenance work, that is the Board's decision.

Plumbing/pipefitting work:

[25] The Union relies on *KACR v IUOE, Local 870*[13] ["*KACR v IUOE*"], which held that: "if an employee in fact works primarily at one craft and wishes to have a craft union represent him in collective bargaining, then he has every right to do so under Section 3 of the *Trade Union Act* so long as this Board determines that a craft unit is appropriate for the purpose of bargaining collectively."[14] In making this determination, the Board will characterize the trade in which the employees were employed for a majority of their time as the one governing their status on an application for certification and for that purpose will review their actual job duties over a reasonably representative period of time.

[26] The primary focus of the Pipefitters was plumbing and pipefitting work: roof drain work; fireline work; and the installation of the plumbing system and associated repair of indoor piping. This work was entirely within the plumbing/pipefitting trade. They were not focused at all on any other trade. This is confirmed, not only by their evidence, but also by the Daily Activity Charts filed by the Employer for what it considered a representative week for the Pipefitters and Holz.

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[11] *Labourers International Union of North America, Local 837 v ReNu Recycling Inc.*, 2007 CanLII 2102 (ON LRB).
[12] *United Brotherhood of Carpenters and Joiners of America, Local Union No. 2103 affecting Kirk Erectors Inc.*, 2022 CanLII 104830 (AB LRB).
[13] 1983 CarswellSask 1011 (SK LRB); application for certiorari to quash Board decision dismissed: *KACR v International Union of Operating Engineers, Local 870*, 1983 CanLII 2464 (SK KB).
[14] At para 38.

Eligible voters:

[27] The Union argues that there is no basis on which to add any additional employees to the bargaining unit for the purposes of the tabulation of the vote.

[28] In *International Union of Heat and Frost Insulators and Asbestos Workers, Local 119 v Wilf's Oilfield Services (1987) Ltd.*[15] the Board stated:

> *[69] The procedure for determining the issue of majority support for many applications for certification in the construction industry was established by the Board in International Union of Operating Engineers, Hoisting, Portable and Stationary, Local 870 v. K.A.C.R. (A Joint Venture), [1983] Sept. Sask. Labour Rep. 37, LRB File No. 106-83. In that case, the union applied to certify a unit of all operating engineers. The employer responded that it did not work according to the usual construction industry craft distinctions and hired and trained "multi-skilled" or "utility" workers who performed a multitude of job functions. The Board rejected the employer's position and declined to deviate from the historical certification by craft. However, to determine whether the union enjoyed majority support for its application, the Board stated, at 43, that it had to "define what an operating engineer does and then decide which employees performed that kind of work on the date that the constituency is to be established." As in the present case, the Board heard much evidence as to the actual work performed by each employee listed on the statement of employment by the employer. In making the determination, the Board confirmed that it does not only look at the work performed by the applicant union's supporters, stating at 44, as follows:*
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> > *Obviously, whether or not an employee supports the applicant does not determine whether or not he is doing the work of an operating engineer. The Board will not permit the applicant to ignore groups of employees from whom it has received only minority support but for whom it has demonstrated an effective ability to represent, simply in order to structure its unit in a way that will give it overall majority support.*
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> *[70] In K.A.C.R., supra, the Board then established the standard it employed to determine who should be on the statement of employment: the trade in which they were employed for the majority of their time for a reasonably representative period of time prior to the filing of the application for certification determined their status. The "reasonably representative period of time" is not rigidly established, but depends on the circumstances of each case.*
> *. . .*

[29] If there is an appropriate construction industry bargaining unit of plumbers and pipefitters, the votes of Burke, Pellerin, Gareau and Holz should be tabulated. The Employer suggested that some employees that it says are welders and foremen should also be included in the tabulation. However, the Union argues, the consistent evidence of the Pipefitters was that they worked predominantly with each other (and with Holz following his commencement of work at the mill in the summer). To the extent they worked with support from other employees at all, it was solely for the purpose of having helpers on hand to clean up or hand over tools, as these other employees were not able to perform the Pipefitters' work. Gilmour should be excluded both

[15] 2007 CanLII 68932 (SK LRB).

because he served as the project manager and because his work did not include any direct involvement in the plumber/pipefitter trade. Nor was there any evidence that Gillert, Bissky, Stillman Michel or Beaulac performed any work within the plumber/pipefitter trade. As such, only the plumbers/pipefitters in the Employer's employ (the Pipefitters and Holz) should be included in the bargaining unit and have their votes tabulated.

Argument on behalf of Employer:

[30] The Employer says the following issues are before the Board:

1. Should the Union be entitled to a certification for construction industry work under Division 13?

2. Was the work being completed exclusive to the trade of pipefitting? Does the Board have jurisdiction to hear disputes on whether work falls within the exclusive jurisdiction of a trade?

3. If the above issues are determined, should this application include all other employees who participated in the same work?

Construction or maintenance:

[31] The Employer argues that putting the mill back into the condition it was previously in, without enhancing it, is maintenance. The Employer acknowledges that demolition falls within the definition of construction, but the demolition work did not start before September 9th, the day this application was filed. The demolition was approved in October, started in November, and was expected to be done in December, then the Employer would be back to doing maintenance. The Board has to look at the big picture. The Employer was established to do maintenance shutdown work. The Board has to look at what kind of company they are.

[32] The Employer argues that, at the time this application was filed, the Employer was operating under a longstanding maintenance contract at the mill, completing maintenance work. Prior to the application, the workers on site were handling maintenance tasks such as installing ceiling tiles, mowing lawns, painting, cleaning, replacing and repairing leaking pipes, and performing maintenance on the septic system. None of this work is demolition or construction.

[33] The Employer argues that the definition of construction industry in clause 6-65(a) of the Act is overbroad, when it uses terms like repairing, revamping and renovating, as these activities would typically be considered maintenance work, and clause 6-65(a) explicitly excludes maintenance work. It argues that the Board must make a determination of which work is

maintenance, based on the nature of the work, on a case-by-case basis, to ensure that the nuance of the legislation is not ignored.

[34] The Employer suggests that, in determining whether work is maintenance, the Board should take guidance from other sources that identify and define maintenance. In the Union's collective agreement[16], the definition of "Industrial & Commercial Work at Industrial Sites" includes the following clause:

> *d) Industrial work shall not include MAINTENANCE WORK which shall mean any work performed of a maintenance, repair, or renovation character within the limit of the plant property. The words "repair" and "renovation" in connection with maintenance refer to work required to restore by replacement or by revamping of parts of existing facilities to the former efficient operating conditions. Maintenance work should not be construed to mean changes in the design of an existing plant which would cause to improve or increase the design output or production of an Industrial Plant or Project as this is considered new Industrial work.*

Appendix B of the collective agreement includes the following provision:

> *DEFINITION OF MAINTENANCE*
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> *All work performed by the Company on existing equipment and machinery, including all associated work in a given plant, shall be maintenance. This shall include replacement of existing individual items of machinery and equipment with new units, including all associated work. It is understood that this concept would not include replacement of an entire process system installation in a facility in order to increase production.*
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> *Addition of spare machinery or equipment may be done under this appendix provided it is for debottlenecking purposes. Example: There are two existing pumps. Both pumps are required to run at all times to maintain full production. A spare may be added for the purpose of having one pump down for maintenance.*
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> *The word "repair" used with the terms of this Appendix and in connection with maintenance, is work requested to restore by replacement or by revamp of parts of existing facilities to efficient operating conditions.*
>
> *Changes to existing units for reasons of feed stock changes or fuel changes shall be maintenance.*
>
> *The word "renovation" used within the terms of this Appendix and in connection with maintenance, is work required to improve and/or restore by replacement or by "revamp" of parts of existing facilities to efficient operating conditions.*[17]

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[16] Exhibit E1: Collective Bargaining Agreement (For Industrial Construction in the Province of Saskatchewan) by and between Each of the Unionized Employers in the Plumber/Pipefitter Trade Division of the Construction Industry on whose behalf CLR Construction Labour Relations Association of Saskatchewan Inc., as the Representative Employers' Organization has entered into this Agreement and Local Union 179 of the United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada; effective February 27, 2022, expires February 28, 2027.

[17] The balance of Appendix B sets out wages, overtime and optional break provisions for maintenance work.

[35] These provisions, the Employer argues, clearly encompass the work being done at the mill as its employees worked to repair, renovate and revamp equipment to return the mill to operating condition. The Employer argues that the Union's definition of maintenance in its collective agreement is accurate, clear and well-developed. Since the Employer and Union both accept this definition, it should have significant value to the Board in making a determination.

[36] The Employer argues that *Andritz Hydro* is distinguishable from this matter as, in that case, the repair, replacement and restoration of systems resulted in increased generation capacity. None of the repair, replacement or restoration work done on the mill resulted in an improvement to an already operational functioning system. They merely returned the already existing systems to minimum functional capacity, many times in a temporary nature. They were working to maintain a low level of functionality, to ensure the space was inhabitable, the bathrooms remained functional and some water would be accessible to extinguish a fire, if necessary.

[37] *Construction & General Workers Local Union 180 v KDM Constructors LP*[18] ["*KDM Constructors*"] and *AlumaSafway* are also distinguishable. They involved maintenance work being completed on a construction site, while construction was occurring, and renovations being completed during a large expansion project, respectively.

[38] When this application was filed, the demolition and construction work had not yet begun on the mill; the Employer was only doing maintenance work. There was going to be construction at some point, but not yet. The work was getting the mill back to condition to operate and demolish. On September 9th they were doing maintenance work. The employees were getting lines and pumps working, not changing the design of the mill. Restoring the mill to its former condition, without enhancing it, is maintenance. The owner, Employer and Union all say this is maintenance work so the Board can only certify it as maintenance.

[39] The Employer referred to *Construction Workers Union, CLAC Local 63 v Nason Contracting Group Ltd.*[19] ["*Nason Contracting*"], where the Alberta Board relied on definitions of maintenance work and non-construction work in its Policy and Procedure Manual. That decision, the Employer argues, reinforces that its ongoing work at the mill is maintenance work. Alberta has purposely and continuously excluded maintenance work from the definition of construction, and the Board should take guidance from that approach.

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[18] 2021 CanLII 25131 (SK LRB); confirmed on reconsideration: 2021 CanLII 78804 (SK LRB).
[19] 2017 CanLII 64948 (AB LRB) at para 20.

[40] The Employer also urged the Board to follow the guidelines established by the Nova Scotia Labour Relations Board, as outlined in *United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, UA Local 56 v Ainsworth Inc.*[20] ["*Ainsworth*"]. In the Employer's view, applying those guidelines here would result in the work being characterized as maintenance.

[41] The Employer argues that the pre-existing maintenance contract held by the Employer should be deferred to, to determine the scope of the work.[21] The work being performed maintains the current intended operations at the mill. The work assists in preserving the current function of a system. The work is necessary to keep the systems functional. The workers are responsible to fix or replace items that break down, to restore the functionality of a system such as the septic system, roof drains or fireline. Nothing is being added to the mill. The work is specifically directed at maintaining the operation as it is, not expanding it. All of the work falls within normal maintenance work. Accordingly, the application should be dismissed.

Plumbing/pipefitting work:

[42] The Employer asserts that, by looking at the type of work the employees were doing over a "reasonably representative period of time"[22], the conclusion is that the Pipefitters were not doing work specific to their trade. None of the work performed by the Pipefitters was plumbing or pipefitting. The Pipefitters were not completing work exclusive to the trade of pipefitting. Many, if not all, of the other workers on the mill site were completing or assisting in the same work as the Pipefitters. The Employer argues that it has long been their practice to have millwrights do the work that the Pipefitters were doing. Seeking to include members of certain trades while excluding others doing the same work wrongly treads into jurisdictional disputes between the trades and the division of work. The Board does not have jurisdiction to hear jurisdictional disputes between trades. As a result, the Employer argues, the application should be dismissed for lack of jurisdiction.

Eligible voters:

[43] In the alternative, this application should be expanded to include all workers participating or assisting in the completion of the work. When there is interplay between trades, an employee's

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[20] 2011 CanLII 152214 (NS LRB).
[21] *AlumaSafway*.
[22] *KACR v IUOE* at para 45.

prospective bargaining unit is determined by looking at the type of work for which they were employed for a majority of their time, or the primary focus of their work.[23] The Employer argues that the work being done by the Pipefitters is not that of pipefitters but of labourers or millwrights. What they actually did rather than what they were intended to do must determine which trade they belonged to when the application was filed.[24] The prime focus of their work is not exclusive to pipefitters. Accordingly, other workers doing the same or related work should be included in the vote.

Argument in Reply by the Union:

Construction or maintenance:

[44] The cases cited by the Employer rely on Alberta guidelines that are grounded in a dramatically different categorization of maintenance work, or a patent and acknowledged error by the Nova Scotia Labour Board. Even leaving aside the radically different statutory and policy structure applicable in Alberta, the decision in *Nason Contracting* can be distinguished on its facts. The work of the employer in that case involved attending to calls or requests at customer sites that remained in operation. With respect to the Employer's reliance on *Ainsworth*, the Union notes that this Board has already held that the Nova Scotia guidelines are not binding in Saskatchewan[25]. In addition, the Nova Scotia Board subsequently indicated that the guidelines were in error. What they meant to say was that work necessary to restore a system or significant part of a system that has ceased to function or to function economically is construction work, not maintenance work.[26]

[45] It would be inappropriate for the Board to read out of the definition of construction industry the explicitly-listed terms "repairing", "revamping" and "renovating". The Pipefitters' work on the roof drains, fireline and indoor plumbing falls squarely within "repairing", being necessary to restore a system or significant part of a system that had ceased to function.

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[23] *Construction & General Workers Union, Local 890 v KACR (A Joint Venture)*, (May 1984) 35 Labour Report 43 (SK LRB); *Canadian Association of Industrial, Mechanical and Allied Workers, Local #11 v Refrigeration Installations*, (Spring 1989) Labour Report 58 (SK LRB).
[24] *International Association of Bridge, Structural and Ornamental Iron Workers, Local 771 and Construction Workers Association (CLAC), Local 151 v Salem Industries Canada Ltd.*, (July 1986) Labour Report 40 (SK LRB).
[25] *AlumaSafway*, at paras 110-111.
[26] *Labourers International Union of North America, Local 615 v 3298915 Nova Scotia Limited*, 2017 NSLB 56 (CanLII).

Plumbing/pipefitting work:

[46] While a substantial portion of the Pipefitters' work was within their exclusive trade jurisdiction, the Board's analysis should not be limited to that work. With respect to work that can be performed by more than one trade, the Board has recognized that overlap may exist between different trades and that activities that are subject to overlapping jurisdiction are properly counted toward the work of an applicant union.[27] The Board's function is to determine whether the work in question is within the jurisdiction of the trade division applied for, not whether it does so to the exclusion of any other potential claim. There is no evidence of any other workers performing plumbing or pipefitting/sprinklerfitting work during the time in which the Pipefitters were employed.

[47] The Board should not accept the Employer's theory that it loses jurisdiction to make a decision merely because the Employer raises a speculative concern about trade jurisdiction that lacks any foundation in the evidence. On the evidence before the Board, only the Pipefitters performed work falling within the plumbing/pipefitting trade to any meaningful extent during the course of their employment. The Employer's argument depends on the flawed theory that the Board cannot certify any union under circumstances where jurisdictional challenges between trade divisions might possibly arise. This theory should be rejected, as it would allow an employer's organization of its work to thwart any attempt to organize.

Eligible voters:

[48] There is no basis for the Board to expand the voters list. The Employer chose not to present any relevant evidence as to the work of the other employees. The evidence presented offered no support for the theory that any employees besides the Pipefitters had a primary focus on plumbing/pipefitting work. If the Employer wanted to have the voters list expanded to include additional workers, they had their chance to tender this evidence during the hearing, and chose not to do so. The consistent and substantially uncontested evidence of the Pipefitters is that they were primarily performing work within the plumbing/pipefitting trade, as part of a primarily self-contained crew. There is no evidence that other workers were performing the same work. The Employer cannot expect the Board to make inferences in its favour as to the nature of the work performed by other employees when it failed to produce available evidence on the issue.[28] It

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[27] *International Union of Heat and Frost Insulators and Asbestos Workers, Local 119 v Wilf's Oilfield Services (1987) Ltd supra* note 15, at para 80-83; *KACR v IUOE*, at para 39.
[28] *United Brotherhood of Carpenters and Joiners of America (Millwrights Union, Local 1021) v Daycon Mechanical Systems Ltd.*, [1999] Sask LRBR 127 at paras 39-42.

cannot frustrate the Board's certification process by raising speculative concerns and demanding a multiplicity of hearings as a substitute for presenting a full case.

Relevant Statutory Provisions:

[49] The following provisions of the Act are relied on in this matter:

> *6-4(1) Employees have the right to organize in and to form, join or assist unions and to engage in collective bargaining through a union of their own choosing.*
>
> *6-9(1) A union may, at any time, apply to the board to be certified as bargaining agent for a unit of employees appropriate for collective bargaining if a certification order has not been issued for all or a portion of that unit.*
>
> *6-11(1) If a union applies for certification as the bargaining agent for a unit or a portion of a bargaining unit or to move a portion of one bargaining unit to another bargaining unit, including a bargaining unit comprised of supervisory employees, as defined in clause 6-1(1)(o) of this Act as that clause read before the coming into force of The Saskatchewan Employment Amendment Act, 2021, the board shall determine:*
>
> > *(a) if the unit of employees is appropriate for collective bargaining; or*
> >
> > *(b) in the case of an application to move a portion of one bargaining unit to another bargaining unit, if the portion of the unit should be moved.*
>
> *(2) In making the determination required pursuant to subsection (1), the board may include or exclude persons in the unit proposed by the union.*
>
> *. . .*
>
> *(7) In making the determination required by subsection (1) as it relates to the construction industry within the meaning of Division 13, the board shall:*
>
> > *(a) make no presumption that a craft unit is the more suitable unit appropriate for collective bargaining; and*
> >
> > *(b) determine the bargaining unit by reference to whatever factors the board considers relevant to the application, including:*
> >
> > > *(i) the geographical jurisdiction of the union making the application; and*
> > >
> > > *(ii) whether the certification order should be confined to a particular project.*
>
> *6-64(1) The purpose of this Division is to permit collective bargaining to occur in the construction industry on the basis of either or both of the following:*
>
> > *(a) by trade on a province-wide basis;*
> >
> > *(b) on a project basis.*
>
> *(2) Nothing in this Division:*
>
> > *(a) precludes a union from seeking an order to be certified as a bargaining agent for a unit of employees consisting of:*
> >
> > > *(i) employees of an employer in more than one trade or craft; or*
> > >
> > > *(ii) all employees of the employer; or*

> *(b) limits the right to obtain an order to be certified as a bargaining agent to those unions that are referred to in a determination made by the minister pursuant to section 6-66.*
>
> *6-65 In this Division:*
>
> *(a) "construction industry":*
>
> *(i) means the industry in which the activities of constructing, erecting, reconstructing, altering, remodelling, repairing, revamping, renovating, decorating or demolishing of any building, structure, road, sewer, water main, pipeline, tunnel, shaft, bridge, wharf, pier, canal, dam or any other work or any part of a work are undertaken; and*
>
> *(ii) includes all activities undertaken with respect to all machinery, plant, fixtures, facilities, equipment, systems and processes contained in or used in connection with a work mentioned in subclause (i), but does not include maintenance work.*

Analysis and Decision:

[50] In reaching a conclusion in this matter, the Board has three issues to address:

1. Was the Pipefitters' work construction industry work or maintenance work?
2. Was the Pipefitters' work plumbing/pipefitting work?
3. Which employees should be included in the bargaining unit for the purpose of the tabulation of the vote?

Construction or maintenance:

[51] The Board is satisfied that the work being undertaken by the Pipefitters at the mill site was primarily construction industry work.

[52] The Board has recently had an opportunity to consider the definition of construction industry, in *Andritz Hydro* and *AlumaSafway*.

[53] In *Andritz Hydro*, the Board referred to a decision of the Alberta Labour Relations Board[29] that analyzed the exclusion of "maintenance" from the definition of "construction" in the Alberta *Labour Relations Code*:

> *[88] In considering this exclusion, the Board cited Saskatchewan Construction Labour Relations Council, Inc. v Wright and Sanders, [1982] 6 WWR 704 [Wright and Sanders], a decision of the Saskatchewan Court of Queen's Bench made prior to the enactment of the maintenance work exclusion in Saskatchewan:*

[29] *Construction Workers Union (CLAC), Local 63 v J. Mason & Sons Inc.*, 1999 CarswellAlta 1606 (AB LRB).

> *40 In exploring the difference between new construction and maintenance, the CASCA Electric panel considered the reasoning of the Saskatchewan Court of Queen's Bench in an earlier 1982 decision. At that time, the Saskatchewan labour statute made no mention of "maintenance," and the word "construction" although used in the statute, was not a defined term. In determining what maintenance work is and whether it should be treated as something different from construction, the Saskatchewan Court stated in Saskatchewan Construction Labour Relations Council, Inc. v. Wright and Sanders, [1982] 6 W.W.R. 704 at 714-715:*
>
> > *Maintenance is defined in Webster's Third New International Dictionary as "the labour of keeping something in a state of repair of efficiency." To maintain is to keep something in repair, as in the upkeep of machinery and equipment to enable it to operate efficiently and in the manner in which it was designed to perform …*
> >
> > *…*
> >
> > *An examination of all of the material including the definition contained in the project agreements, an examination of related statutes [which included the Court's review of Alberta's statute at the time] and interpretations of those statutes and interpretations placed upon the information by the industry, lead me to conclude that there is a dichotomy between maintenance and construction. Maintenance is work that sustains or keeps up an operating facility to enable it to continue to operate efficiently and as designed. It is work on an existing facility and not the creation of a new or expanded work or facility which will create increased production or design capabilities.*

. . .

[91] Along the same lines, UA Local 179 relies on United Assn. of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, Local 787 v Francis H.V.A.C. Services Ltd., 2000 CanLII 13330 (ON LRB) [Francis H.V.A.C.], a decision of the Ontario Board. In determining which collective agreement applied to the work in that case, the Board outlined its view of the distinction between construction and maintenance:

> *9 It is not difficult to find general definitions of the distinction between construction and maintenance in the Board's jurisprudence. Essentially construction work involves the addition to an existing facility, results in an increase of the production capability of a facility, or restores to a working order a system which has ceased to function or to function economically. Maintenance work sustains, maintains or preserves an operating facility or part thereof, and enables it to operate efficiently or to attain its production capacity. […]*

. . .

[93] In National Elevator & Escalator Assn. v I.U.E.C., Local 50, [1991] OLRB Rep 555 (Ont LRB), a case cited in Francis H.V.A.C., the Board stressed the importance of assessing the context, with the assistance of some general guidelines:

> *16 . . . Whether something is repair or maintenance work will depend upon the nature and purpose of the work in question in the context of the facility or system in or to which the work is being performed. Generally, work performed on existing equipment in an existing facility for the purpose of keeping the facility or a system in it operating properly before the facility or system has ceased to do so, is appropriately characterized as maintenance work. On the other hand, work involving the addition to or replacement of equipment for the purpose of either increasing the capacity of the facility or system, or restoring the ability of a facility*

> *or system to function properly, is appropriately characterized as repair work. The amount, apparent significance, or value of the work in question may be part of the context in which the assessment is properly made but are in no way determinative of the question. Similarly, whether a facility or system is shut down while the work in question is being performed may also be relevant, but will not be determinative.*
>
> *. . .*
>
> *[105] UA Local 179 argues that the work of replacing pipes constitutes repair work and should be understood as a construction industry activity. Granted, a failure to maintain a facility or part thereof can lead to dysfunction in the system and to consequential repairs. This type of work will generally be found to fall under the construction industry definition. But similar work may also be necessary for the purpose of sustaining, preserving, and maintaining a system. The replacement of materials, including with updated materials that are more productive and efficient, does not inevitably mean that the work was construction. The context is paramount.*

[54] The work being done by the Pipefitters was not to keep the mill in a state of repair. It was not being done to sustain, maintain or keep up an operating facility to enable it to continue to operate efficiently. The mill had ceased to operate. The purpose of their work was to restore to working order systems that had ceased to function. This means that the work the Pipefitters were doing falls within the definition of "construction industry" in clause 6-65(a) of the Act. While Michel emphasized in his evidence that none of the Pipefitters' work was new build, the definition of construction industry makes it clear that it extends beyond new construction. It also includes the activities of reconstructing, repairing and revamping, which is what the Pipefitters were doing.

[55] Maintenance work is work that sustains a facility's ability to operate efficiently. It is work done on existing equipment to keep it functioning properly before it has ceased to do so. The fireline was not functioning, the bathrooms were not functioning properly and a large number of the roof drains were not functioning before they were repaired by the Pipefitters. This is an example of the situation described in the jurisprudence where a lack of maintenance over many years leads to a need for repair.

[56] In *Master Insulators Association of Ontario, Inc. v International Association of Heat and Frost Insulators and Asbestos Workers Local 95*[30], the Ontario Board stated:

> *9. In Board File No. 0868-80-U, supra, at page 1477 the Board, in a proceeding between the employer, the trade union and other parties, examined the difference between "repair" and "construction industry" which are defined in section 1(1)(f) of the Act. In that decision the Board concluded that "maintenance" is not part of the construction industry and stated in paragraphs 29, 30 and 31 of that decision as follows:*
>
> > *29. Maintenance work performed by the employers who were named in this complaint is in reality part and parcel of the production and maintenance*

[30] *Supra* note 10.

> *operations of the industrial clients for whom the work is performed. These industrial clients may, and frequently do, perform their own maintenance work with their own employees who are included in their own industrial bargaining units. In the context of the work affected by this complaint "maintenance" is difficult to distinguish from "repair". In our view, it is a question of the context of any given work and the degree of addition or subtraction of such work to an existing system or part of a system. Where the work assists in preserving the functioning of a system or part of a system, such work is maintenance work. Where the work is necessary to restore a system or part of a system which has ceased to function or function economically, such work is repair work. "Maintenance" and "repair" are not mutually exclusive concepts, and lack of adequate maintenance will surely produce a situation where repair becomes inevitable. In our view, the performance of adequate and timely maintenance forestalls or reduces the requirement for repair.*

[57] The mill had been abandoned for many years. It was in a derelict condition. The work performed by the Pipefitters for the Employer was not preserving the functioning of the mill. It was restoring aspects of the mill that had ceased to function properly: bathrooms, fireline and roof drains. Lack of adequate maintenance produced the situation at the mill where repair was required. The definition of construction industry in the Act includes the repair work that the Pipefitters were performing.

[58] The Employer argues that the definition of construction industry in section 6-65 of the Act is overbroad when it uses terms like repairing, revamping and renovating as those activities would typically be considered maintenance, and the definition of construction industry specifically excludes maintenance. What this argument overlooks is that in determining whether work is construction or maintenance, the Board is required to consider the context of the work. It is not the physical nature of the work that defines it as construction, but the context in which that work takes place. At the mill, the context is that the work that was being done by the Pipefitters was not being performed to sustain and maintain an operating facility. It was being performed to restore systems that had ceased to function. The mill was abandoned from 2006 to 2014, and then again from 2015 to late 2021. Given the lack of maintenance over this lengthy period of time, the work required to be done by the Pipefitters falls within the definition of construction industry.

[59] The documents on which the Employer relies, as the basis for its argument that the work being performed on the mill was maintenance work, all state that maintenance work is performed on an “existing” facility. The abandoned, derelict buildings at the mill site cannot reasonably be described as an existing facility. Maintenance is work that sustains or keeps up an operating facility to enable it to continue to operate efficiently. That is not what was occurring here. An examination of the overall purpose of the work and the scope of the overall project leads to the conclusion that the work the Pipefitters were doing is properly characterized as construction work,

because it was restoring to working order systems that had ceased to function or function properly. Restoring the ability of a facility or system to function properly is construction industry work.

[60] It should go without saying that policy documents prepared and relied on by the Alberta and Nova Scotia Labour Boards to determine the distinction between maintenance and construction, pursuant to the legislation in place in their provinces, is not binding on this Board. This is particularly so given the differences in the definitions in the legislation of the three provinces, and the uncertainty around the policy direction in Nova Scotia. That said, they were thoroughly reviewed by this Board in *AlumaSafway* and *Andritz Hydro* to determine what guidance they might provide in the interpretation of the Act. The Employer argues that the Board should disregard the decisions in *Andritz Hydro*, *KDM Constructors* and *AlumaSafway*, on the basis that they are distinguishable from this matter. The Board disagrees. In those decisions, the Board carefully considered many of the same arguments and case law relied on by the Employer in this matter (including the Alberta Policy and Procedure Manual and Nova Scotia Policy Statement). While the Board is not bound by its previous decisions, consistency in decision-making is a goal that the Board strives to achieve, to provide predictability for employers and unions. In the interests of providing consistent direction to the labour community respecting the difference between construction work and maintenance work, those decisions were relied on in making the determination in this matter.

[61] The Board does not accept the Employer's argument that a Division 13 certification is inappropriate because they are a maintenance company. An employer can engage in more than one industry. Michel and Herbert emphasized in their evidence that the Employer was established to do maintenance work. However, the evidence is clear that they also do construction work, for example, they successfully bid on the fibreline demolition project at the mill, and they concede that demolition work is construction work. While it may be true that most of the work done by the Employer on other projects is maintenance work, whether or not that is true has no bearing on the determination of the issue whether the work the Pipefitters were doing at the mill site was maintenance work or construction work. Division 13 does not require that a business be operated solely or primarily in the construction industry in order for that business to be considered to be an employer in the construction industry.

[62] The Employer argues that at the time this application was filed, the Employer was operating under a longstanding maintenance contract. The evidence before the Board does not support this assertion. The Employer admits that it does not have a written agreement with respect to the work that it says has been regularly occurring over several years, and no written record of

the terms and scope of their work. The evidence of the Employer's witnesses was vague and inconsistent on this issue and was not relied on in making a determination on this issue.

[63] The Union and Employer both provided evidence and argument respecting the demolition work that the Employer was contracted to perform at the mill site and whether the Pipefitters performed any demolition work. The evidence was inconclusive. Given the Board's finding that the work being done to repair the fireline, bathrooms and roof drains is construction work, it is unnecessary to make a determination on this issue.

Plumbing/pipefitting work:

[64] In *KACR v IUOE*, the Board stated:

> *[44] Where employees are engaged in the work of different crafts the Board will characterize the craft in which they were employed for a majority of their time as the one governing their status on an application for certification. In determining which type of work employees were employed at "for a majority of their time" the Board will look not to the date of the making of the application but, rather to a period of time leading up to the date of the application. Just how far back in time the Board will go depends on the particular circumstances of the individual case. See Teamsters Local Union No. 230 et al v. Johnson-Keiwit Subway Corporation 66 C.L.L.C. 16,091 at page 912 and Chauffeurs, Teamsters & Helpers, Local 395 v. Western Caissons (Sask) Limited,67 C.L.L.C. 16,015 at page 983.*
>
> *[45] The Board will attempt to review actual job duties over a reasonably representative period of time and will not permit either the union or the employer to confine the review to an arbitrarily established time frame which is not indicative of normal responsibilities. . . .*

[65] In *International Union of Heat and Frost Insulators and Asbestos Workers, Local 119 v Wilf's Oilfield Services (1987) Ltd.*[31], the Board described its process in determining this issue as defining what the tradespeople in question (in this matter, plumbers and pipefitters) do and then deciding which employees performed that kind of work. Relying on *KACR v IUOE*, the Board stated that the standard to be employed is to determine the trade in which employees were employed for the majority of their time for a reasonably representative period of time prior to the filing of the application for certification.

[66] The Employer argues that the work being done by the Pipefitters was not exclusive to the trade of pipefitting. That is not the question before the Board. The Employer argues that the primary focus of the Pipefitters' work was not work of pipefitters but of labourers or millwrights. The Employer suggests that the primary work being done by the Pipefitters was maintenance work, such as installing ceiling tiles, mowing lawns, painting and cleaning. The evidence before

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[31] *Supra* note 15.

the Board does not support these assertions. The Employer argues that what the Pipefitters actually did rather than what they were intended to do must determine which trade they belonged to when the application was filed. While the Board agrees with this latter statement, the evidence leads to a conclusion that the primary focus of the work being done by the Pipefitters was work of plumbers and pipefitters. The Board heard evidence as to the actual work performed by each of the Pipefitters and is satisfied that the trade in which they were employed for the majority of their time for a reasonably representative period of time prior to the filing of the application for certification was plumbing and pipefitting. The Board accepts the Pipefitters' evidence that they worked together, doing plumbing and pipefitting work.

[67] The primary focus of the Pipefitters was repairing roof drains, repairing the fireline, and installation of the water and sewer system and associated repair of indoor piping. They worked primarily on roof drains during the winter and continued to do so for the duration of their employment when additional leaks were discovered. Once the ground thawed they began working on the underground fireline, which was discovered to have multiple leaks. The fireline was restored to the point of being usable, but was not fully repaired when they were laid off. They also replaced pipes that had frozen, and installed a temporary water and sewer system so that indoor plumbing was available on site. This work is entirely within the plumbing/pipefitting trade. They were not focused at all on any other trade.

[68] There is no foundation in the evidence for the Employer's argument that raised a speculative concern about trade jurisdiction. There is no evidence of a jurisdictional dispute on site respecting which tradespeople should be doing the work the Pipefitters were performing. The Board does not accept the Employer's argument that the Board lacks jurisdiction to hear this matter.

Eligible voters:

[69] The final issue, then, is which employees were employed for the majority of their time, over a reasonably representative period of time prior to the filing of this application, performing plumbing and pipefitting work. The evidence of the Pipefitters satisfies the Board that they meet this criterion. The Union admits that Holz also meets this criterion. With respect to the other five employees that the Employer attempted to add to the voters list, there is no evidence before the Board respecting their work. The only exception is Gilmour. The evidence indicated that Gilmour could not be characterized as a foreman for the purpose of establishing the bargaining unit. Michel indicated that Gilmour's title is Project Manager, not just for this project, but as a full time employee

of the Employer. The Employer argues that many if not all of the other employees on the mill site were completing or assisting in the same work as the Pipefitters. There is no evidence before the Board to support this assertion. There is no evidence of any other workers performing plumbing or pipefitting/sprinklerfitting work during the time in which the Pipefitters were employed.

[70] The Employer argues that the Union did not properly respond to or object to the composition of the amended voters list. The Board does not accept this submission. As noted above, when there is a dispute between a union and an employer respecting which workers are entitled to vote, the practice of the Board staff is to include everyone in the vote. This is the appropriate procedure to follow. It is not within the purview of the staff to determine who is eligible to vote. That decision is made by the Board following a hearing. The Employer was aware and in agreement since September 14, 2022 that who were the eligible voters was an issue to be determined by the Board following the hearing in this matter. The Employer also raised this as an issue in its Reply and Amended Reply. The Union and Employer both flagged this as an issue in their opening statements at the beginning of the hearing.

[71] The Employer suggested that, if the Board was to conclude that a construction industry bargaining unit for plumbers and pipefitters was appropriate, it may be necessary or appropriate to reconvene the hearing to allow it to provide further evidence to support its position that additional workers are eligible voters in this matter. The Board does not accept that proposal. The Employer had the ability and the opportunity during the hearing to provide the Board with evidence to support this conclusion but no such evidence was provided.[32] The evidence before the Board from the Pipefitters is that no one, other than Holz, performed the same work that they were performing. The Employer chose not to present any evidence as to the work of the other employees.

[72] Therefore, the only conclusion available to the Board is that the Pipefitters and Holz are the only employees eligible to vote with respect to the Union's certification application. With these Reasons the Board will issue an Order directing that the ballots held in the possession of the Board Registrar be tabulated, but only ballots cast by Phillip Gareau, Marcel Pellerin, Robert Burke and Greg Holz will be counted.

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[32] *United Brotherhood of Carpenters and Joiners of America (Millwrights Union, Local 1021) v Daycon Mechanical Systems Ltd., supra* note 28.

[73] The Board thanks the parties for the submissions they provided to assist the Board in making a determination. The Board has reviewed and considered all of them in coming to a decision in this matter.

[74] This is a unanimous decision of the Board.

DATED at Regina, Saskatchewan, this **25th** day of **May, 2023.**

LABOUR RELATIONS BOARD

Susan C. Amrud, K.C.
Chairperson