

November 9, 2005

To: Employee and Labour Relations Committee

From: Administration Committee

Subject: Certification of Iron Workers, Local 721

Action Taken by the Committee:

**The Administration Committee:**

- (1) requested the Executive Director, Human Resources, in consultation with the City Solicitor, to report to the Administration Committee and the Employee and Labour Relations Committee on action the City could take to de-certify construction unions as allowed by provincial legislation; and
- (2) referred the following motion to the Employee and Labour Relations Committee for consideration:

**“That:**

- (1) Chapter 67 of the City of Toronto Municipal Code be amended by amending Part B2, “Current Labour Trade Obligations in the Construction Industry” and Part B3. “Guidelines for Prospective Bidders” in Attachment “A”, titled “Labour Trades Contractual Obligations in the Construction Industry”, to include The Ontario Erectors Association and The International Association of Bridge, Structural, Ornamental and Reinforcing Iron Works; and
- (2) the appropriate City officials be authorized and directed to take the necessary action to give effect thereto.”

Background:

The Administration Committee on November 7, 2005 considered a report (October 6, 2005) from the City Manager reporting, as requested, on the certification proceedings, providing a copy of the City's submission to the Ontario Labour Relations Board as well as information as to whom they informed of the Iron Workers' application filed on May 30, 2005, and that it be scheduled as a deputation item.

Recommendation:

It is recommended that this report be received as information.

The following persons addressed the Committee:

- Ben Barnes, Solicitor, obo Association of Bridge, Structural, Ornamental and Reinforcing Ironworkers, Local 721;
- Paul Mitchell, Ontario Erectors Association;
- Aaron Murphy, Business Manager, Ironworkers, Local 721;
- Mark Baseggio, obo Open Shop Contractor's Association;
- Arthur Potts, obo Open Shop Contractor's Association; and
- Jay Peterson, Central Ontario Building Trades.

City Clerk

Yvonne Davies/mh  
Item 2

C. Interested Persons  
Manager, Fair Wage Office

# TORONTO STAFF REPORT

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October 6, 2005

To: Administration Committee  
From: City Manager  
Subject: Certification of Ironworkers, Local 721

Purpose:

The Administration Committee referred the communication (September 12, 2005) from Councillor Holyday to the City Manager for report to the next meeting of the Administration Committee on October 6, 2005. The communication from Councillor Holyday requested that staff report to the Committee on the certification proceedings, providing a copy of the City's submission to the Board as well as information as to whom they informed of the Iron Workers' application filed on May 30, 2005, and that it be scheduled as a deputation item.

Financial Implications and Impact Statement:

There are no financial implications arising from this report.

Recommendations:

It is recommended that this report be received as information.

Background:

Prior to amalgamation, both the predecessor City of Toronto and the former Municipality of Metropolitan Toronto were "certified" under the *Labour Relations Act* ("LRA") by a number of construction trades unions. Pursuant to the *Public Sector Labour Relations Act, 1997*, ("Bill 136") the rights of those unions flowed through to the amalgamated City of Toronto.

The Facilities and Real Estate Division includes a unit that is responsible for maintaining, repairing and performing construction work (usually minor in scale) on several hundred buildings and properties. With respect to the former Toronto area, the City has historically employed, and continues to employ, several dozen employees that are members of various construction unions, including, amongst others, electricians, carpenters, plumbers, painters and sheet metal workers. As part of this complement of construction trades employees, the City has employed welders from time to time. Although the City had not been certified under the LRA by

the Ironworkers, these welders have been employed in accordance with the provisions of the Ironworkers collective agreement.

On May 30<sup>th</sup>, 2005 Local 721 of the Ironworkers filed an Application for Certification with the Ontario Labour Relations Board (“OLRB”) to represent City employees performing work falling within the Ironworkers’ bargaining unit. At that time, the certification process provided for a vote to be held amongst the eligible employees, allowing those employees to choose whether they wanted to be represented by the Union. To qualify for a vote to be held, the Ironworkers had to demonstrate to the OLRB that 40% of employees performing bargaining unit work appeared to be members of the Union on the application date. In addition, only City employees performing work falling within the Ironworker bargaining unit on the date of the Application would be eligible to vote.

#### Comments:

When an Application for Certification is filed, an Employer is required to advise the OLRB of the names of all the employees who were working for the Employer on the date of the Application and performing work of the bargaining unit. Disputes between Unions and Employers frequently arise as to how many workers were at work on the date of the Application and what kind of work was being performed. In this case, the Ironworkers had indicated that the City employed three employees working within the bargaining unit on May 30<sup>th</sup>, 2005 whereas the City advised the OLRB that there were only two.

The City informed both the Toronto Civic Employees Union, Local 416 (“CUPE 416”) and the Sheet Metal Workers’ International Union (“Local 30”) about the Application. Local 30 was advised because one of their members was working with the two welders on May 30<sup>th</sup>, 2005 and appeared to have been included in the Ironworkers Application. CUPE 416 was advised because the City employs numerous welders within the CUPE 416 bargaining unit. A copy of the City’s response to the Application is attached.

Local 30 did not intervene, as the Ironworkers did not dispute the City’s position that only two workers were eligible to vote.

CUPE 416 intervened and took the position that the employees in question perform “maintenance work”, which is within CUPE 416’s jurisdiction. Maintenance work does not fall within the “construction industry” provisions of the *LRA*. There are several ongoing disputes between CUPE 416 and various construction trades as to what work constitutes “maintenance work” as opposed to “construction work”. The City did not dispute that the workers were performing “construction work” on the date of the Application.

The City did take the position that the bargaining unit description for the Ironworkers should be modified to reflect the subsisting rights of other bargaining units at the City. The OLRB ruled against the City in this regard and determined that the City’s position was directed towards avoiding jurisdictional disputes and not to the representational rights of the workers. The City requested a reconsideration of the OLRB’s decision, which was also rejected. Copies of the decisions (June 8<sup>th</sup>, 2005 and June 21<sup>st</sup>, 2005) are attached.

A secret ballot vote of the two eligible employees was conducted by the OLRB on June 10<sup>th</sup>, 2005. The votes were counted at the OLRB's Regional Certification meeting on June 29<sup>th</sup>, 2005. CUPE 416's intervention in the Application was also addressed at that time. Upon a review of the work being done by the employees on May 30<sup>th</sup>, 2005 CUPE 416 withdrew its intervention. Correspondingly, the Ironworkers agreed to enter into a dispute resolution process with the City and CUPE 416 to resolve work jurisdiction disputes. Both workers were determined by the OLRB to have voted in favour of being represented by the Union. As a result, the OLRB issued the standard OLRB construction certificates on August 3, 2005.

Conclusions:

This report is for the information of the Committee. However, since it involves a labour relations matter, it should be forwarded to the Employee and Labour Relations Committee.

Contact:

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Human Resources, City Manager's Office  
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Shirley Hoy  
City Manager

List of Attachments:

1. Copy of City Response to Certification dated June 2<sup>nd</sup>, 2005
2. Copy of Order of Ontario Labour Relations Board dated June 8<sup>th</sup>, 2005
3. Copy of Order of Ontario Labour Relations Board dated June 21<sup>st</sup>, 2005