IN THE MATTER OF AN ARBITRATION

BETWEEN

C.A.R.V. MASONRY INC.
- the Employer

and

LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 1059
- the Union

AND IN THE MATTER of Section 41 of the *Labour Relations Act* and the settlement of the terms of a first collective agreement

Arbitration Board:

Howard Snow	- Chair
Bill Ross	- Employer Nominee
C. A. Ballentine	- Union Nominee

Appearances:

On behalf of the Employer:

no one

On behalf of the Union:

Mark J. Lewis	- Counsel
Manuel Reis	- Business Representative

Hearing held in London, Ontario on October 30, 1995.

AWARD

This Board of Arbitration was established under Section 41 of the *Labour Relations Act* to settle the terms of a first collective agreement between C.A.R.V. Masonry and the Labourers' International Union of North America, Local 1059. At a hearing held on October 30, 1995 the Board indicated orally the terms on which it would settle the collective agreement. However, neither the Employer nor the Employer nominee attended the October 30 hearing. Thus the Board indicated it would issue a written award recording the decisions taken at the hearing and providing brief reasons for those decisions.

Pursuant to the strict time limits in Section 41 the chair fixed the first day of hearing for 10:00 a.m., October 30, 1995. The parties were formally notified of the hearing by the Office of Arbitration, although the chair had informally advised both nominees of the day prior to fixing the date and prior to advising the Office of Arbitration. On October 30, 1995 neither the Employer nor the Employer nominee, Mr. Ross, attended the hearing.

As neither the Employer nor its nominee were in attendance at the hearing at the scheduled time, the Board delayed the start of the hearing for thirty minutes in order to allow extra time for both the Employer and Mr. Ross to arrive. During that thirty minute period, the chair telephoned Mr. Ross' office and was advised by Mr. Ross' secretary that Mr. Ross would not be attending. The chair also telephoned the Employer and left a message on the Employer's answering machine.

When the hearing began, the chair advised Mr. Ballentine and the Union of the above

developments. He further advised that before he had fixed the date for the hearing he had contacted Mr. Ross' office and had confirmed with Mr. Ross' secretary that Mr. Ross, who was then temporarily out of the country, would have returned to London by October 30 and had nothing scheduled for that day. The chair indicated that he had asked Mr. Ross' secretary to note that this hearing would be fixed for October 30. Finally, he noted that Mr. Ross' secretary had telephoned some days later, but prior to the day of the hearing, that she had indicated Mr. Ross had a difficulty with October 30, and that the chair had advised that if an alternate day was desired Mr. Ross should first raise the issue with the Union or the Union nominee.

Mr. Ballentine advised that Mr. Ross had not contacted him about alternate days. He also noted various difficulties which he had encountered in trying to contact Mr. Ross about selecting a chair and establishing dates for a hearing.

The Union indicated it had heard from neither Mr. Ross nor the Employer regarding the date of the hearing.

The Union took the position that in these circumstances the hearing should proceed. The Union noted that this is a first contract arbitration conducted under a statutory framework with strict time limits, that there had been no request for an adjournment, and that no reason had been provided for the failure of the Employer or Mr. Ross to attend.

The chair sought the Union's submissions on the effect of Section 6(14) of the *Hospital Labour Disputes Arbitration Act* which is incorporated by Section 41(9) of the *Labour Relations Act*. Section 6(14) reads as follows:

> Where a member of a board of arbitration appointed by a party or by the Minister is unable to attend the first hearing at the time and place fixed by the chair, the party shall, upon the request in writing of the chair, appoint a new member in place of such member and where

> such appointment is not made within five days of the date of the request, the Minister shall, upon the written request of the chair, appoint a new member in place of such member.

The Union made alternative submissions regarding this issue. The Union's principal submission, however, was that Section 6(14) was premised on a nominee being "unable to attend". The Union said that while it was clear that Mr. Ross was not in attendance, there was no evidence from which we could, or should, conclude that he was "unable" to attend. The Union noted that before the date had been fixed, the chair had indicated that, according to Mr. Ross' secretary, Mr. Ross had nothing booked for the day. Subsequently no attempt had been made to secure an adjournment and no contact had been made with the Union or with its nominee. The Union said that if an Employer could frustrate the intent of the statutory scheme by simply not attending, and having their nominee simply not attend, without requiring an Employer or its nominee to show anything more, then Section 41 would be made quite unworkable. The Union had attended at the hearing at the date and time that had been fixed, and there was simply no evidence and no basis upon which we should conclude that Mr. Ross was "unable" to attend. Moreover, the Union submitted that the absence of both the Employer and Mr. Ross suggested that the Employer and its nominee were simply ignoring the process provided in Section 41.

The Board (i.e. the chair and Mr. Ballentine) held a brief executive session and then issued its ruling orally. We concluded that the mere absence of Mr. Ross was quite different from Mr. Ross being "unable to attend". We found no basis upon which we could conclude that Mr. Ross had been "unable to attend". Thus Section 6(14) did not apply in this instance. As a result the Board ruled that as the Union was present, and since it was clear that Mr. Ross had been advised of the hearing date, time, and location, the Board would proceed on the merits.

The Board then heard evidence from Manuel Reis, the Union's business representative, and

received submissions from Mr. Lewis on behalf of the Union as to the collective agreement which the Union sought.

Briefly, the Union was certified on October 31, 1994, a "no board report" had been issued on January 13, 1995, and an order for the settlement of the terms of an agreement pursuant to Section 41 was subsequently made. The Union has only one collective agreement with employers for masonry work for this geographic area (OLRB Area 3). This standard agreement was the agreement which the Union sought with the Employer. See Appendix 1 for a copy of the standard agreement. Further the evidence disclosed that the Employer had at no time advised the Union of any terms upon which it would enter into a collective agreement. Finally, Mr. Reis testified that it was important to maintain one collective agreement, alluding to reasons which we describe more fully when dealing with the Union's submissions.

The Union sought its standard agreement for masonry contractors. The Union referred the Board to the *Report of the Royal Commission on Labour-Management Relations in the Construction Industry,* (March 1962, H. Carl Goldenberg, Commissioner), *Report of the Industrial Inquiry Commission into Bargaining Patterns in the Construction Industry,* (May 1976, D. E. Franks, Commissioner) and *Public Policy, Bargaining Structure and the Construction Industry,* (1980, Joseph B. Rose, published by Butterworths), each of which stress the importance and value in having a single or common collective agreement throughout a geographic area. The Union sought its standard agreement for the reasons recognised in these authorities.

The Union referred to *International Union of Operating Engineers, Local 793 v. Cornwall Gravel Company Limited,* [1984] OLRB Rep. December 1693, in which the Ontario Labour Relations Board took "note of the fact that in the construction industry trade unions are

generally reluctant to enter into a collective agreement with a single employer that provides for terms of employment less favourable for employees" as to do so would undermine established local conditions (para. 13). The Union also referred to *Teamsters, Chauffeurs, Warehousemen and Helpers Union, Local No. 880 v. Canada Building Materials Company*, [1990] OLRB Rep. October 1012, in which the Board settled the terms of a first agreement under what is now Section 41. In that case the Board decided to impose a "comparable agreement" (see para. 18). In the situation before us, a comparable agreement would be one similar to the Union's standard agreement. Finally the Union referred to *United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, Local Union 800 v. Bonik Incorporated*, [1991] OLRB Rep. March 292, in which the Board was settling the terms of a collective agreement under what is now Section 41. The Union in that case proposed an agreement in standard form. The Board commented on this issue as follows:

> The signing of standard form or identical collective agreements between a trade union and employers engaged in the same type of construction is in recognition of the concept that in so far as wages and conditions of employment are concerned these elements have been removed from the competitiveness of these employers. Such a collective agreement becomes a neutral document. If it were otherwise and such employers were able to sign different collective agreements with the trade union, then the system of collective bargaining could not be sustained. With identical collective agreements each employer competes for available construction work based upon matters outside the collective bargaining relationship such as the skill and efficiency of management including the effective use of capital and equipment, reputation, efficient utilization of employees, supervision, contacts and skill in estimating jobs. The standard form or identical collective agreement secures the attainable objectives of a trade union and the employees in the bargaining unit, and, ensures that with respect to wages and conditions of employment such employers compete with each other on what may be referred to as a level playing-field. (*para.* 5)

The Labour Relations Board then reviewed the terms in dispute and generally awarded the standard clauses. The one exception involved the geographical scope of the agreement. The Board refused to enlarge the scope beyond the certificate, although the standard agreement contained a broader recognition clause.

This Board decided that in this instance, based on the evidence and submissions, that it would be appropriate to award an agreement closely modelled on the standard union collective agreement as set out in Appendix 1. However, paragraph 4 of that standard agreement indicates the agreement will continue in force annually unless terminated. Section 41(18) indicates that an agreement settled under Section 41 of the *Labour Relations Act* "is effective for a period of two years from the date on which it is settled". At the October 30 hearing we noted that paragraph 4 of the standard agreement was in conflict with Section 41(18) of the *Act* and indicated that were revising Article 4 to provide for an agreement of some two years so as to conform to the *Act* and that the agreement would continue in force until April 30, 1998, and thence annually. However, on further reflection, it is clear we cannot vary the statutorily mandated two year duration. The duration is not a minimum of two years, but rather the *Act* establishes the precise duration of the agreement which we settle. With that in mind, and desiring to change paragraph 4 of the standard agreement as little as possible while conforming to the provisions of Section 41(18), we revise Article 4 as it appears in Appendix 1 to read as follows:

> This Agreement shall continue in force for two years from October 30, 1995, and thereafter shall continue in force annually from the date contained herein unless either party furnishes the other with notice of termination, or proposed revision of this Agreement within a period of no more than one hundred and twenty (120) days before the 30th day of April 1998, or in a like period in any year thereafter and the parties shall convene a meeting within fifteen (15) days and bargain in good faith to endeavour to reach an Agreement.

This language is similar to language proposed by the Union at the hearing.

Thus, with the above modification of paragraph 4, we established the terms of the collective agreement between the parties as the Union's standard agreement contained in Appendix 1.

We note that under Section 41(8) of the *Labour Relations Act* each party shall pay the remuneration and expenses of their nominee and one-half of the remuneration and expenses of the chair. We direct the parties to do so. In the case of the chair, the dollar amount of

one-half of the fees and expenses required to be paid by each party is $1,141.61.

Finally, we remain seised to deal with any issue that may arise in the implementation of this award.

Dated in London, Ontario, this _____ day of November, 1995.

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Howard Snow, Chair

I concur _____

C. A. Ballentine, Union Nominee

Did not participate _____

Bill Ross, Employer Nominee