**MEMBER BULLETIN**

March 1, 2019

**ALL GTSWCA CONTRACTOR MEMBERS**

**Re: Potential Displacement Applications (“Raiding Period”)**

The Greater Toronto Sewer and Watermain Construction Association (“GTSWCA”) wants to prepare our contractors for the possibility of a displacement application, commonly referred to as a "raid", by some unions seeking to represent construction workers. In particular, some unions may attempt to raid existing bargaining units which are currently represented by:

* Universal Workers Union, LIUNA Local 183 ("Local 183")
* Teamsters Local 230 (“Local 230”), or
* International Union of Operating Engineers, IUOE Local 793 (“Local 793”)

In preparation for such raid attempts, all employers represented by the GTSWCA should be aware of the following:

* **When Can Raids Occur?** Raid applications may begin on or after March 1, 2019 up to at least April 30, 2019. This is known as the “Open” or “Raiding” Period.
  + During this two-month period, employees may apply to the Ontario Labour Relations Board (“OLRB”) for a termination of bargaining rights (decertification) or another union may "raid" the incumbent union, seeking to displace the incumbent (raid).
* **How Do Raids Occur?**  In circumstances in which a union attempts to "raid" an incumbent union, it will have employees of the company sign union cards indicating their desire to be represented by the raiding union.
  + When the raiding union believes it has sufficient cards to apply to the Ontario Labour Relations Board (OLRB) to displace the incumbent union, an application will be filed with the Board.
  + This Application may only be filed between **March 1, 2019 and, in most cases, ending on April 30, 2019**. In order to be in a position to request the Board to hold a vote, the raiding union must obtain cards from at least **40% of those people who were at work on the date of application**. One should be cautioned that a union will rarely apply with only 40% but will likely have 50% or more of cards from employees who were working on the date of application.
* **Why are the Dates So Important?** The critical date on an application is the date of application as that date crystallizes the individuals who may be considered to have their names placed on the voters' list. This is important because during the period of March 1st to the end of April, it is likely that your crew size will be greatly reduced, and your company will be more vulnerable to this type of application.
* **Representation Vote:** A raiding union will likely be entitled to a representation vote that would give eligible voting employees the right to select between the raiding union and the incumbent union, which in our case is either Local 183 or Local 793. The vote would likely happen five business days after the application is filed and sent. The raiding union would be entitled to a vote if it is able to organize 40% of the employees in the bargaining unit at work on the date that the application is made, and the majority of those employees vote for the union.
* **Which Employees Can Vote?** According to typical Labour Board procedure, the employees entitled to participate in the secret ballot vote are those employees who were actually at work on the application date. This means, for example, that even if you normally employ 30 employees, but on a particular day (for instance on a weekend) only three employees are at work, only these employees will be eligible to vote. As a result, “who” is working on a given day could affect the results of a vote because it is likely that only employees at work on the date of application will be eligible to vote.
* **What Percentage is Required in the Vote to Decertify A Union?** The raiding union must obtain support from **50% plus 1 of those people who vote**.
* **How Could You Be Notified?** Generally, these applications come in through fax, although they can also be delivered. Beginning March 1st, it is critical that you monitor your fax machine and that your office employees know to advise you as soon as an application comes in by fax or otherwise.
* **Contact the GTSWCA As Soon As Possible:** Employers typically have only **two (2) business days to respond to a raid application**. By way of example, if an application comes in on Friday, the response will normally be due on Tuesday. The GTSWCA should be notified as soon as possible whenever an application is received. Also ensure that the incumbent Union (either LIUNA Local 183 or IUOE Local 793) is aware.
* **No Employer Interference:** Employers must respect the wishes of employees to ultimately pick their own union. Employers cannot use intimidation or coercion to attempt to influence employees. While the right to free speech applies to both employees and employers, as well as to unions, it is important to understand that statements made to employees could be construed as coercive if they are inaccurate or harsh. While you have the right to free speech, you should be very careful in utilizing it. Feel free to consult with us (GTSWCA) if you require more information on this issue.
* **Limitations on the Right of Other Unions to Organize Employees:** You cannot prevent another union from speaking to your employees. But you should note that **it is not permitted for union organizers to speak to your employees during working hours on private property**. You are also permitted to inform the incumbent Union (either LIUNA Local 183 or IUOE Local 793) if organizers from other unions speak to your employees, although you are not legally obligated to do so.
* **Status of the Raiding Union:** For a union to make an application in the construction industry, it must be found to be a construction trade union. The identity of the raiding union could therefore make a difference.
* **What Can Be Done to Avoid A Successful Raid?**  As soon as your foremen, supervisors or office staff recognize that people who are not usually on site are present speaking to the employees, immediately notify business representatives in the GTSWCA sector at Local 183, Local 793 or Local 230 of the job site activity.
  + **Eliminate or severely restrict overtime, night time or weekend work.** These periods are favoured by unions for gathering membership cards.
  + Turn off fax machines in offices or trailers that are closed or not supervised, so that important faxes or information do not go unnoticed. **Do not ignore faxes received.**
  + You do not have to allow just anyone from a union on site. You are entitled to request a business card or credentials from a person purporting to be from “the union” and **if it is not a union that you deal with you are entitled to refuse entrance to the site**.
* **What is the GTSWCA’s Position?** The current industry structure is based upon the respective status of LIUNA Local 183 and IUOE Local 793 as bargaining agent for employers active in the sewers and watermains sector in Board Area 8 (basically, the GTA) and Simcoe County. The GTSWCA's accreditation rights, which give it the authority to bargain on your behalf, is based on the continuation of Local 183 and Local 793 as bargaining agents. **If another union were able to replace either Local 183 or Local 793, instability in the industry could be the result**. Raids by unions against one another are based on individual employer bargaining units. For example, another union could not raid the entire sewer and watermain industry, but instead would have to make applications in respect of each individual employer.

If you have any questions regarding this Raiding Period notification, please contact either Giovanni Cautillo electronically at [giovanni.cautillo@gtswca.org](mailto:giovanni.cautillo@gtswca.org) or via phone at 905-629-7766 ext. 229, or Patrick McManus electronically at [patrick.mcmanus@gtswca.org](mailto:patrick.mcmanus@gtswca.org) or via phone at 905-629-7766 ext. 222.