



File No. 00-001/00-004

Decision No.

**IN THE MATTER OF AN APPLICATION UNDER SECTIONS 12 AND 13 OF THE
ACT**

BETWEEN:

**CHARLOTTETOWN TYPOGRAPHICAL UNION, LOCAL 30963, THE
NEWSPAPER GUILD OF CANADA COMMUNICATIONS WORKERS
OF AMERICA**

APPLICANT

AND:

**THE CHARLOTTETOWN GUARDIAN, A DIVISION OF HOLLINGER
CANADIAN NEWSPAPERS**

RESPONDENT

SOME EMPLOYEES OF THE GUARDIAN

INTERVENORS

COUNSEL FOR THE APPLICANT

NELSON ROLAND

COUNSEL FOR THE RESPONDENT

**MARK LEDWELL and
MURRAY MURPHY**

COUNSEL FOR THE INTERVENORS

PAUL MULLIN, QC

DECISION

Background

Applications for Certification for certain bargaining units pursuant to Sections 12 and 13 of the *Labour Act, R.S.P.E.I. 1988, Cap L-1*, and Section 3 of the *Labour Act Regulations* were filed by the Applicant Union. The Application filed on 7 January 2000 described the Unit as “all employees employed in the mailrooms in the Municipality of Charlottetown, save and except Supervisors and those above the rank of Supervisors”. In Paragraph 6 of its Application filed on 17 January 2000, the Applicant describes the unit as “all full time employees of the Editorial

Department including bureaus save and except the Managing Editor, persons above the rank of Managing Editor and persons employed in a confidential capacity respecting labour relations in the Province of Prince Edward Island.”

There was a pre-hearing conference held on 24 February 2000 with the legal counsel and Chair of the Board participating. The hearing of the matter was conducted in Charlottetown on 27 March 2000.

By indications from the learned counsel, Paul JD Mullin, QC, the Board was advised that the Intervenors would not be appearing or be represented at the hearing of the matter although they had been represented at the pre-hearing conference.

Cases Considered

1. ***National Automobile, Aerospace, Transportation and General Workers Unions of Canada (CAW-Canada) and Allied Signal Aerospace Canada***, [1998] PEILRB No 98-009;
2. ***Mariott Corp. v. C.G.L U., Local 1079A*** [1989] PEIJ No 119 (AD);
3. ***United Brotherhood of Carpenters and Joiners of America (CJA), Local 1338 v. Prince Edward Island (Labour Relations Board)***, [1990] P.E.I.J. No. 119 (AD);
4. ***APM Construction Inc. v. Construction and General Labourers Union, Local 1077***, [1998], PEIJ No 45 (TD);
5. ***APM Construction Inc. v. Construction and General Labourers Union, Local 1077***, [1999], PEIJ No. 4, (AD);
6. ***International Association of Heat and Frost Insulators and Asbestos Workers, Local 131 and Guildford Ltd***, [1995] PEILRB, No. 95-060;
7. ***Construction and General Labourers Union, Local 1077 and Padinox Inc. COB Paderno Canada and Some Employees of Padinox***, [1996] PEILRB, No 96-004;
8. ***United Food and Commercial Workers' International Union and Boland's Limited***, [1991] PEILRB, No 91-012
9. ***The Association of Nurses, Saint Johns' Hospital London (Applicant) v. The Sisters of Saint Joseph of the Diocese of London, in Ontario***, [1972] Ontario Labour Relations Board, OB Shime, Vice-Chairman and O Hodges and FW Murray, Board Members
10. ***E. Blake et al and Amalgamated Transit Union and The Crown in Right of Ontario (Toronto Area Transit Operating Authority)***, The Grievance Settlement Board, [1988], OB Shime, Chairman
11. ***Canadian Union of Professional Security Guards, v. Meadowvale Security Guard Services Inc.***, [1993] OLRB Rep 1340

12. *Labourers International Union of North America, Local 506 v. Beer Precast Concrete Limited*, [1970] Ontario Labour Relations Board, Rory F Egan, Vice-Chairman and E Boyer and RW Teagle, Members
13. *Northern Electric Office Employee Association v. Northern Electric Company Limited* [1963] Ontario Labour Relations Board
14. *International Molders and Allied Workers Union AFL.C10.CLC. v. Beach Industries Limited* [1966] Ontario Labour Relations Board

Statutes Considered

Labour Act, R.S.P.E.I. 1988, Cap. L-1;
Labour Act Regulations, E.C. 521/71 Sections 2 and 3;

Evidence

The only exhibits identified by the Board at the time of hearing was Exhibit A-1, a copy of the 13 July 1965 Certification Order of the Charlottetown Typographical Union, Local 963.

Discussion and Conclusion

The Board had the benefit of very able argument from counsel for the respective parties. There were numerous authorities cited by both counsel.

The Respondent presented the challenge to the Board's jurisdiction on a number of grounds and included in those grounds was the following list:

- a. The Applications contain technical errors so numerous that the Applications cannot constitute Applications within the meaning of the *Act* and *Regulations*.
- b. The Union did not, concurrently with the Applications, file a copy of its constitution, rules and by-laws containing a full and complete statement of its objects and purposes.
- c. Charlottetown Typographical Union Local No. 30963 filed no evidence to establish that it is validly constituted or even exists. The Union constitution establishes that locals are established by Charter. The Applicant appears to be a local. There is no Charter before the Board.
- d. There is no evidence that the persons signing the Applicants possessed authority to act for anyone.

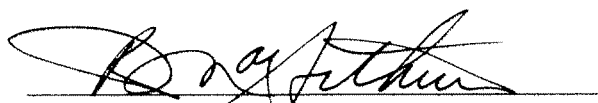
With respect to Items B, C and D, the Applicant has very candidly admitted that the documents referred to had not been filed and proceeded to present legal arguments as to how the shortcomings could be overcome.

Unfortunately, this Board can not find favour with any of the legal arguments advanced in support of the Applicant's position that the Board does have or can, by way of acceptance of those legal arguments and principles, become possessed of jurisdiction over the matters.


The Supreme Court of Prince Edward Island has stated on repeated occasions, in the *Mariott* case, the *APM Construction* case and in at least one other instance not cited by counsel, that the requirements of Sections 2 and 3 of the Regulations are mandatory. Given that the Supreme Court in this province has consistently ruled in that regard and given that this Board has found itself, in this case, presented with a fact situation that falls squarely within the realm of that jurisprudence, the Board is bound by these precedents to conclude that it lacks the requisite jurisdiction by reason of the deficiencies in the filing of the initial application.

As it ruled in the *Allied Signal* case, this Board must rule to deny the Respondent's request for a time bar. The Board has ruled it has no jurisdiction as there is no Application before it. The discretion to award a time bar is only open to the Board when it has dismissed an Application. Having ruled that there is no Application before it, it is impossible for the Board to exercise any discretionary powers to award a time bar.

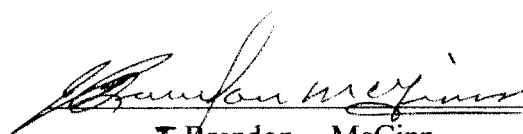
In summary, the Applicant, by its own admission, has failed to meet one, if not two, of the mandatory requirements set out in the Regulations. The Board is not seized of the requisite jurisdiction to proceed to consider the merits of the Application.



Robert R. MacArthur
Chair

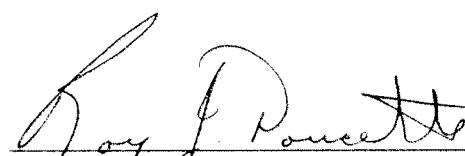


Ted Crockett
Member



J. Brendon McGinn
Member

This Decision made by the Prince Edward Island Labour Relations Board on 27 March 2000 and issued under the hand of its Chief Executive Officer on 31 May 2000.



Roy J. Doucette
Chief Executive Officer