



File No 02-061 and 02-065

Decision No.

**IN THE MATTER OF
A MOTION TO WITHDRAW AN OBJECTION TO AN APPLICATION FOR
CERTIFICATION,
A MOTION FOR AN ENLARGEMENT OF TIME FOR FILING,
A MOTION FOR A GRANT OF INTERVENOR STATUS,
A MOTION FOR CONSENT TO PROSECUTE, AND
A MOTION TO WITHDRAW AN APPLICATION FOR CERTIFICATION**

BETWEEN:

**CONSTRUCTION AND GENERAL LABOURERS' AND GENERAL
WORKERS' IN CONSTRUCTION AND COMMERCIAL, LOCAL
UNION NO. 1077**

APPLICANT

AND:

STEEPLEJACKS SERVICES, a Division of a numbered Ontario Company

RESPONDENT

AND:

**UNITED BROTHERHOOD OF CARPENTERS & JOINERS OF
AMERICA, LOCAL 1338**

INTERVENOR

**COUNSEL FOR THE APPLICANT
REPRESENTING FOR THE RESPONDENT
COUNSEL FOR THE INTERVENOR**

**Mr. J. Gordon MacKay, QC.
Mr. Kent Connell
Mr. Raymond A. Mitchell,**

DECISION

Background

An application for certification was filed on the 18th day of July, 2002, pursuant to Subsection 54 of the *Labour Act*, R.S.P.E.I. 1988 Cap. L-1, and Section 3 of the *Labour Act Regulations* as amended, requesting that the Board certify the Applicant as bargaining agent of the employees in the unit set forth as appropriate for collective bargaining. The Applicant, in paragraph 6 of its application, describes the unit as:

All labourers performing scaffold building, handling materials in relationship to the erection and dismantling or any other tasks required with scaffolding and general labourer duties, except those above the rank of foreman in the province of Prince Edward Island.

The Board investigated and considered this application, and determined the unit described hereunder to be appropriate for collective bargaining, and satisfied itself that a majority of the employees wished the applicant trade union to be certified as bargaining agent on their behalf. On the 6th day of August, 2002, the Board issued an Order certifying the Construction and General Labourers' and General Workers' in Construction and Commercial, Local Union No. 1077 to be bargaining agent for :

... all employees of the Respondent employed as labourers performing scaffold building, handling materials in relationship to the erection and dismantling or any other tasks required with scaffolding and general labourers' duties, except those above the rank of foreman in the province of Prince Edward Island.

This Order was confirmed as having been delivered to the Respondent company on the 7th day of August, 2002.

A pair of documents entitled a Reply to Application for Certification, presumably pursuant to Section 54(6) of the *Labour Act*, R.S.P.E.I. 1988, Cap L-1 as amended, and a Request for Intervenor status, pursuant to Section 8(1) of the Regulations of the *Labour Act*, R.S.P.E.I. 1988, Cap L-1 as amended, were simultaneously filed with the Board on the 21st day of August, 2002, requesting, by inference, a rescission of the 6th day of August, 2002 Order, pursuant to Section 54(7) of the *Labour Act*, on a number of grounds.

By way of an application, filed with this Board on the 12th day of September, 2002, pursuant to Section 46(1) of the *Labour Act*, R.S.P.E.I. 1988, Cap L-1 as amended, the Applicant requested the consent of this Board to prosecute the Respondent Company for failure and/or refusal of the Respondent to comply with the Prince Edward Island Labour Relations Board Order, being Certification Order Serial No. 08-02, File No. 02-061, issued on the 6th day of August 2002.

There was a hearing date set for November 15, 2002, however, at the request of counsel, the hearing was postponed. An informal Pre-hearing Conference was held by telephone conference call on the 1st day of November, 2002 in which the scope of the issues was discussed and a two day hearing was scheduled.

There was a hearing convened on the 14th day of January, 2003, and immediately following the introduction of the matters, and the Board's grant of the motion to consolidate the matters, Mr. Connell, on behalf of the Respondent Company, and the other two parties, through their counsel, jointly requested an adjournment, which the Board also granted. The matter stood adjourned until late that afternoon at which time an adjournment until 9:30 a.m. on the 15th day of January, 2003 was granted by the Board. That morning there was an oral withdrawal of the Respondent's objection to the subject order and request for extension of time presented on the basis of and through the Chief Executive Officer's account of his telephone conversation with Mr. Connell who was not present at the hearing room. Mr. Connell had undertaken to provide a written withdrawal. The matter was adjourned, on the understanding that the Board remained seized of all the issues and matters. The matter would remain adjourned for a date to be fixed until each of the parties advised the Board of

their respective positions.

On the 16th day of January, 2003 the Board received from Mr. Connell a letter to the effect that:

January 15, 2003

*Labour Relations Board
PO Box 2000
Charlottetown, PEI C1A 7N8*

Fax: 368-5526

Phone: 368-5554

*Mr. Roy J. Doucette
Chief Executive Officer*

Re: Request for Review - Consent to Prosecute - Construction and General Labourers and General Workers in Construction, Industrial and Commercial, local 1077 - Steeplejack.

At this time Steeplejack is requesting an adjournment of the hearing for Request to Review - Consent to Prosecute.

Steeplejack has reached a settlement with Local 1077. Once the language and terms have been forged to the satisfaction of both parties, the memorandum of agreement will be signed and filed with the Labour Relations Board.

Upon completion Steeplejack will withdraw its request for a review of the Labourers Certification Order.

I would like to thank the board and panel members for their patience and time invested thus so far.

Yours truly,

(signed)

*Kent Connell
Branch Manager*

KC/mlw

Further correspondence from the Applicant received by the Board on the 3rd day of April, 2003, indicated that they wished to withdraw their Application for Certification and that the Applicant and Respondent had entered into a Voluntary Recognition Agreement, which Agreement was enclosed. A hearing date was set for May 14, 2003. By letters from the legal counsel for the Intervenor it is recorded that the Applicant had agreed to an adjournment of that hearing date to allow time for counsel to receive instructions.

The next notable event was the request of the Intervenor, by letter from Legal Counsel Mr. R. A. Mitchell, dated June 27, 2003, and received by the Board on the 14th day of July, 2003, for the Board to reconvene the hearing for the sole purpose of addressing the Intervenor's Motion for expansion of time to file the intervention.

The hearing was reconvened on October 15, 2003. The Applicant and Intervenor were present and represented by Counsel. The Respondent was neither present nor represented at this day of the hearing.

Cases Considered

1. ***Glen MacKinnon, Sylvan Gallant, Zoel Arsenault, Reuben Feehan, et. al, Employees of B-Line Construction v. International Brotherhood of Electrical Workers, Local 1432, and B-Line Construction (Trade Name) a Division of N. A. S. Holdings Ltd.*** (unreported, 25 March 1997, Prince Edward Island Labour Relations Board);

Statutes Considered

1. ***Labour Act, R.S.P.E.I. 1988 Cap. L-1***, sections 13, 48, 53, and 54.
2. ***Labour Act, Regulations (EC 521/71)*** Sections 2, 4, 8, and 25.

Evidence

At the hearing on January 14 and 15, 2002, neither party called any evidence.

At the hearing on October 15, 2003, there was anecdotal evidence, with the concurrence of counsel for the Applicant, from Mr. Raymond A. Mitchell, legal counsel for the Nova Scotia & Prince Edward Island Regional Council of Carpenters, Millwrights & Allied Workers, United Brotherhood of Carpenters & Joiners of America, Locals 83, 1178, 1338, 1392 & 2004. Briefly summarized, Mr. Mitchell's evidence was that he had attempted to contact the Board for clarification on whether the ten day time limitation for filing of documents, pursuant to Section 48(2) of the *Labour Act* of Prince Edward Island, was to be calculated as ten "clear days" or ten "business days". He was unable to reach Board staff, but did speak to the Chief Executive Officer of the Labour Standards Board, Mr. Wayne MacKinnon. Mr. Mitchell interpreted the telephone conversation to mean that the limitation period would run for ten "business days". As it happened, Mr. Mitchell would be visiting Prince Edward Island on the tenth "business day", and indicated, in a second telephone call to Mr. MacKinnon, that he would file both the Reply on behalf of Respondent, Steeplejacks Services, and the Request for Intervenor Status, on behalf of his client, on that day. Mr. Mitchell, on direct questioning from the Board, assured the Board that he could have and would have complied with the ten "clear day" filing limitation period, but for his belief, albeit a mistaken belief, that the filing on August 21, 2002 would meet the requirements of the legislative limitation period. For the record, it was pointed out that the actual date of filing was two days outside the statutory filing limitation period.

Issues

The issues before the Board relate to the following:

1. The Respondent's Motions for withdrawal of its objection to the Certification Order and Motion for enlargement of time to file its Reply;
2. The Intervenor's Motion for enlargement of time to file its Request for Intervenor Status
3. Whether the Board should grant the request of the United Brotherhood of Carpenters & Joiners of America, Local 1338, for Intervenor status;
4. Whether the Board should rescind its Certification Order of August 6, 2002;
5. Whether there are grounds for granting the Board's consent in respect to prosecution of the Respondent company for non-compliance with a Board Order; and
6. Whether the Board should grant the Applicant's Motion to withdraw its Application for Certification.

Decision

The Respondent company orally withdrew its objection to the Certification Order dated the 6th day of August, 2003. This withdrawal was accepted by the Board at the hearing on January 15, 2003, subject to written confirmation from Mr. Connell. This written confirmation has been filed with the Board. Therefore the Board formally grants its consent to the withdrawal of the Respondent's objection to Application for Certification filed on the 18th day of July, 2002 and the resulting Order of the Board dated on the 6th day of August, 2002. In all the circumstances of this case, an exercise of the Board's discretionary power to extend the time for filing of the Reply becomes redundant. That Motion, made on the part of the Respondent, is hereby dismissed.

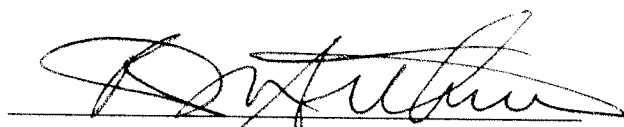
This Board concurs with the request of the parties, and their respective counsel, that at this juncture, the manner in which to proceed is to address the sole issue of the Intervenor's Motion for extension of time for filing of their documentation. On the basis of the contrite evidence of Mr. Ray Mitchell, and through a determination that, in the particular circumstances of this case, there clearly exists the situation that calls for the exercise of the Board's discretionary powers under Section 48(2) of the Act, the Board concludes that this is an appropriate instance to extend the time for filing of documentation. On those two bases the Board grants the Intervenor's Motion for extension of time for filing its Request for Intervenor Status.

The Board is mindful of the fact that discretionary powers are a particularly important privilege granted to the Board in the empowering legislation, and are not powers that are to be exercised lightly. The facts of each individual case are to be considered in the light of this privilege being exercised with all due caution. Cumulatively, the facts in this case completely satisfies the Board that the exercise of its discretionary powers is fully warranted. The case of *Glen MacKinnon, Sylvan Gallant, Zoel Arsenault, Reuben Feehan, et. al, Employees of B-Line*

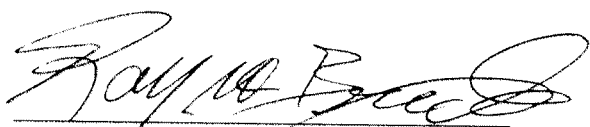
Construction v. International Brotherhood of Electrical Workers, Local 1432, and B-Line Construction (Trade Name) a Division of N. A. S. Holdings Ltd., is both distinguished on its facts, and at the same time indicative of the existence of the discretionary powers and their appropriate exercise. The Board, in that instance, was prepared to exercise the discretionary powers "... if there was a compelling reason why the Form 10 could not have been filed...." In the instant case, not only was there a compelling reason why the document was not filed, but, in fact, the document could have been filed within the limitation period, but for the misinterpretation of the consultation with an ostensible representative of the Board.

The Intervenor's Motion for the two day extension of time to file its Request for Intervenor Status, is granted and the Board so rules.

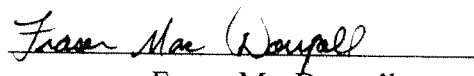
The Board further rules that the matters of the third, fourth, fifth, and sixth issues, as outlined above, are reserved for further hearings before the Board.



Robert R. MacArthur
Chair

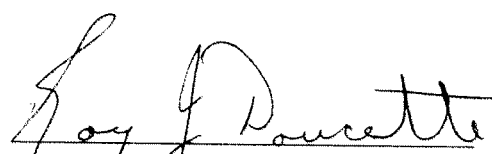


Ray McBride
Member



Fraser MacDougall
Member

This Decision made by the Prince Edward Island Labour Relations Board on the 17th day of November, A.D., 2003, and issued under the hand of its Chief Executive Officer on the 21st day of November, A.D., 2003.



Roy J. Doucette
Chief Executive Officer