



File No. 02-064

Decision No.

**IN THE MATTER OF AN APPLICATION UNDER SUBSECTIONS 54(6) OF THE
PRINCE EDWARD ISLAND LABOUR ACT R.S.P.E.I. 1988 CAP. L-1
(REVIEW OF CONSTRUCTION INDUSTRY CERTIFICATION ORDER)**

BETWEEN:

**INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS,
LOCAL 1432**

APPLICANT

AND:

JIM MURRAY LTD.

RESPONDENT

**REPRESENTATIVE FOR THE APPLICANT
COUNSEL FOR THE RESPONDENT**

Mr. Ray McBride
Ms. Karen A. Campbell

DECISION

Background

The Applicant Union, International Brotherhood of Electrical Workers, Local 1432, pursuant to an application filed with the Labour Relations Board of Prince Edward Island, under Section 54 of the *Labour Act, R.S.P.E.I. 1988, Cap L-1*, was certified as bargaining agent for the employees of the Respondent company employed on Prince Edward Island by an Order of the Board dated September 10, 2002.

The Respondent filed an Application for Review on the 20th day of September, 2002, and it requested the rescission of the September 10, 2002 Order, pursuant to Section 54(7) of the *Labour Act*. On September 24, 2002, the Board forwarded the Application for Review to the representative of the Applicant. The Applicant filed with the Board a Reply to the Respondent's submissions on the 19th day April, 2005.

Statutes Considered

- (a) *Labour Act*, R.S.P.E.I. 1988, Cap. L-1, Sections 4, 52, 53, and 54.

Evidence

The written evidence before the Board on these matters is in the form of sworn affidavit evidence in the Application for Review and in the Reply filed with the Board.

By his sworn Application for Review, dated September 19, 2002, Mr. Jim Murray, of the city of St. John's, Province of Newfoundland, attested that:

The named Respondent/Employer in the Order of the Board, Jim Murray Ltd., is not a company with which I, Jim Murray, am currently associated or involved, and as far as I am aware, Jim Murray Ltd. is a company no longer in existence, having been previously wound up. If another company, Jim Murray Ltd., was incorporated and carried out work on Prince Edward Island, it is not a company with which I am associated or involved and as such, have no response and would not seek a review of the Certification Order issued on September 10, 2002.

By his letter dated the 23rd of March, 2005, Mr. Ray McBride, Business Manager for the Applicant Union, advised the Board that:

RE: Certification Order File #o2-064 International Brotherhood of Electrical Workers Local 1432 and Jim Murray Ltd.

Local 1432 I.B.E.W. has decided not to contest the review application of Jim Murray Ltd. in regards to the above noted certification.

If you require any further information please call.

Issues

The issues that are to be considered and decided by this Board are listed as follows:

1. Whether, on September 10 2002, Jim Murray Ltd. was an "employer" as defined in the *Act*;
2. Whether there are grounds for granting the relief sought.

Decision

The evidence presented and submissions advanced in this matter has been carefully reviewed and considered by this Panel of the Board.

The Law

Under the provisions of Part II of the *Labour Act*, Construction Industry Labour Relations, Sections 52 and 53 read:

52. In this Part

(a) "accredited employers' organization" means an organization of employers that is accredited under the Act as the bargaining agent for a unit of employers in the construction industry;

(b) "appropriate unit" means a unit determined by the board to be appropriate for collective bargaining purposes;

(c) "construction industry" means the on-site construction, alteration, decoration, repair, or demolition of buildings, structures, roads, sewers, water mains, pipelines, tunnels, bridges, canals, or other works but excludes the manufacture, installation or sale of any prefabricated house or modular home or mobile home;

(d) "council of trade unions" means a council that is formed for the purpose of representing or that according to established bargaining practice represents trade unions as defined;

(e) "employee" means a person employed in the construction industry but does not include

(i) a person who, in the opinion of the board, performs management functions or is employed in a confidential capacity in matters relating to labour relations, or

(ii) a member of the architectural, dental, engineering, legal or medical profession entitled to practice in Prince Edward Island and employed in a professional capacity, registered nurses, and teachers as defined in the School Act;

(f) "employer" means any person who employs or in the preceding twelve months has employed more than one employee and who operates a business in the construction industry;

(g) "employers' organization" means an organization of employers that is formed for purposes that include the regulation of relations between employers and employees as defined in this section;

(h) "sector" means one of the following divisions of the construction industry:

(i) industrial and commercial,

(ii) housebuilding,

(iii) sewers, tunnels and water mains,

(iv) road building,

(v) any other sector determined by the board;

(i) "trade union" or "union" means a trade union that according to established trade union practices pertains to the construction industry;

(j) "unionized employee" means an employee on behalf of whom a trade union or council of trade unions has been certified or recognized as bargaining agent in accordance with section 18 and where the certification or recognition has not been revoked;

(k) "unionized employer" means an employer of unionized employees in the geographical area and sector concerned. R.S.P.E.I. 1974, Cap. L-1, s.51; 1994, c.32, s.19; 1999, c.32, s.1

53. Except where inconsistent with Part II of this Act the provisions of Part I apply to the construction industry and all references therein to "employer" and "trade union" shall be taken to be references to "employers' organizations" and "council of trade unions" where appropriate. R.S.P.E.I. 1974, Cap. L-1, s.52.

This Application for Review is brought pursuant to the provisions of Section 54 of the Labour Act, which reads:

54. (1) Where a trade union makes application for certification as bargaining agent for a unit of employees of an employer, the board shall forthwith make or cause to be made such examinations of records and other inquiries as it considers necessary and shall determine

(a) whether the unit applied for is appropriate for collective bargaining; and

(b) whether a majority of the employees in the unit wish the applicant trade union to be certified as bargaining agent for such employees.

(2) If the board is satisfied that the unit applied for is appropriate for collective bargaining and that a majority of the employees in the unit wish the applicant trade union to be certified as bargaining agent for such employees, the board shall forthwith and without holding a hearing, issue a certification order, that, except as provided in this section, shall have the same effect as an order under section 13.

(3) An order issued under subsection (2) constitutes, as of the date of issue, a notice to commence collective bargaining and the trade union and the employer, or an employers' organization representing the employer, shall within ten days after the notice is issued, or such further time as the parties may agree, commence collective bargaining with a view to concluding a collective agreement.

(4) Where a trade union applies for certification under this section, the board may determine the unit of employees that is appropriate for collective bargaining by reference to a geographic area and it need not confine the unit to a particular site or project.

(5) Section 22 applies where the board issues an order under subsection (2).

(6) The employer named in an order issued under subsection (2) may within ten days of the date of issue apply to the board for a review of the order, but the application shall not alter the rights or obligations of the parties arising from the order.

(7) Upon receipt of an application under subsection (6) the board shall conduct a review and shall either confirm, vary or rescind such order and where the order is rescinded, subsection 20(2) applies.

(8) Sections 12, 13, 14, 15 and 16 apply to applications under this section but where there is any conflict this section prevails. R.S.P.E.I. 1974, Cap. L-1, s.53.

Findings of Fact

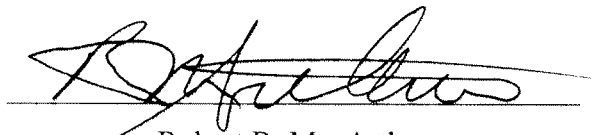
The Board's appreciation of the evidence leads it to conclude on the date the Certification Order was issued, that the Respondent/Employer named in the subject Certification Order was non-existent in fact true. Jim Murray Ltd. was a company which had been previously wound up and

neither had any employees nor was it capable of operating a business in the construction industry in Prince Edward Island on September 10, 2002.

Conclusion

The Board, in light of this finding of fact, with respect to the first issue cited above, must conclude that the named Respondent/Employer, Jim Murray Ltd., as set out in the Certification Order dated September 10, 2002, was not an “employer”, as defined in the *Labour Act*, as it was not then operating a business in the construction industry as contemplated under the legislation.

In regards to the second issue before the Board, given its conclusion on the first issue, it must follow that there was a total absence of jurisdiction to enable the issuance of the said Certification Order of this Board, dated September 10, 2002, and that Order must therefor be held to be invalid. The Certification Order must be rescinded and be declared a nullity. Pursuant to Section 54(7) and 4(1) of the *Labour Act*, the Board rules accordingly.



Robert R. MacArthur
Chair

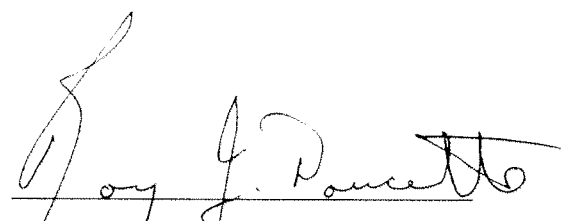


Gerry Doyle
Member



Elizabeth MacFadyen
Member

This Decision made by the Prince Edward Island Labour Relations Board on the 9th day of August, A.D., 2005, and issued under the hand of its Chief Executive Officer on the 9th day of August, A.D., 2005.



Roy J. Doucette
Chief Executive Officer