

File No. 06-009

Decision No.

**IN THE MATTER OF AN APPLICATION UNDER SECTION 7 (3) OF THE
PRINCE EDWARD ISLAND LABOUR ACT R.S.P.E.I. 1988 CAP. L-1 (COMMON
EMPLOYER DECLARATION)**

BETWEEN:

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

APPLICANT

AND:

**COFFRAGE ALLIANCE LTEE., 9119-3822 QUEBEC INC. (also carrying
on business as "COFFRAGE DENICOURT", and COFFRAGE DE LA
CAPITALE LTEE.**

RESPONDENTS

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

Mr. Raymond Mitchell
Mr. Eugene P. Rossiter, Q. C.

DECISION

Background

On February 9, 2006, the United Brotherhood of Carpenters and Joiners of America, Local 1338 filed with the Labour Relations Board of Prince Edward Island an Application under Section 7 of the *Labour Act, R.S.P.E.I. 1988, Cap L-1*. The Applicant sought, at paragraph 1 of its application, "... a declaration or order that the Respondents are and shall be treated as constituting one employer for the purposes of this Act."

The Respondent's Reply to this Application is contained in correspondence from Coffrage Alliance Ltee. dated March 7, 2006. It denied a number of the allegations made in the Application and asking that the Board not grant the Applicant's request.

On June 5, 2006, the Board received from Mr. Ray Mitchell, Legal Counsel for the Applicant, acknowledgment of the receipt of the Respondents' Reply, a statement of disagreement with the Respondents' position, and a request that the matter proceed to a hearing.

The Board set the hearing of the matter for Wednesday and Thursday, the 26th and 27th of July 2006. On July 13, 2006, the Board received requests from both Coffrage de la Capitale Ltee. and

Coffrage Alliance Ltee. for a postponement of the hearing. The Board granted this request and re-scheduled the hearing for Thursday, September 21st , and Monday, September 25th , however, on September 18th the Board learned it could not accommodate the scheduled date of September 21, 2006, but did maintain the scheduled September 25, 2006 hearing date.

In correspondence from Mr. Ray Mitchell, Legal Counsel for the Applicant, received September 25, 2006, the Board was advised that there has been “a negotiated resolution of the matter.”

Statutes Considered

- (a) *Labour Act*, R.S.P.E.I. 1988, Cap. L-1, sections 7 (3) and 53.

Evidence

The written evidence before the Board on these matters is in the form of the sworn affidavit evidence in the application and in the reply thereto filed with the Board.

Issues

The sole issue that is to be considered and decided by this Board is whether to ratify the “negotiated resolution of the matter” which negotiated terms are listed as follows:

1. With the consent of Coffrage Alliance Ltee. and Coffrage de la Capitale Ltee., the Board Order would be issued declaring that these two companies, for purposes of all matters related to the *Labour Act* of Prince Edward Island, are to be considered one employer; and
2. In regards to 911903722 Quebec Ltee., the Applicant wishes to withdraw its Application.

Decision

All of the available evidence has been thoroughly reviewed by this Panel of the Board. Careful consideration has been afforded this evidence in light of the written submissions advanced by the respective Parties regarding this Common Employer Application.

The Law

This Application is brought pursuant to the provisions of Section 7 (3) of the *Act* which states:

7. (3) Where, in the opinion of the board, associated or related activities or businesses are carried on by or through more than one corporation, individual, firm, syndicate or association, or any combination thereof, under common control or direction, the board may treat the corporations, individuals, firms, syndicates or associations or any combination thereof as constituting one employer for the purposes of this Part. R.S.P.E.I. 1974, Cap. L-1, s.7; 1974(2nd), c.33, s.1; 1980, c.31, s.1; 1988, c.36, s.2.

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

53. Except where inconsistent with Part II of this Act the provisions of Part 1 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.

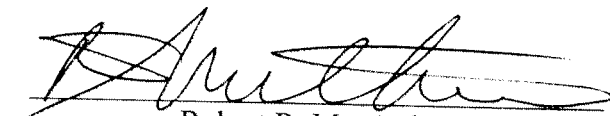
Findings of Fact

The Board finds that the parties have each had the benefit of quite sufficient time to consider each others positions and the evidence that each is about to offer in support of their respective positions. Both parties have done so under the guidance and very competent advice of able legal counsel. The negotiated resolution of the matters is certainly one that would be well within the realm of possibilities in terms of eventual resolutions had the matter gone to hearing.

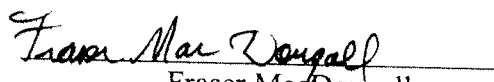
Conclusion

The Board, in light of these findings, has concluded that there exists no impediment, neither legal nor practical, to the Board ratifying the negotiated settlement as has been set out above.

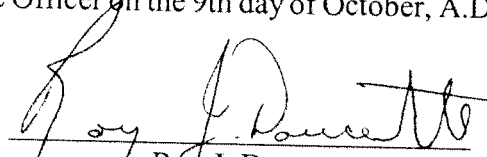
The Board allows the Applicant to withdraw its Application so far as it relates to 911903722 Quebec Ltee.. The Board grants the relief sought in this Application for an Order that for all the intents and purposes of the *Labour Act* of Prince Edward Island, Coffrage Alliance Ltee. and Coffrage de la Capitale Ltee., are to be considered as constituting one employer. Therefor the Application, as hereinbefore amended, is granted in part and in accordance with the terms of the negotiated settlement, which settlement is hereby ratified. The Board rules accordingly.


Robert R. MacArthur
Chair


Ray McBride
Member


Fraser MacDougall
Member

This Decision made by the Prince Edward Island Labour Relations Board on the 9th day of October, A.D., 2006, and issued under the hand of its Chief Executive Officer on the 9th day of October, A.D., 2006.


Roy J. Doucette
Chief Executive Officer