



File No.

Decision No.

06-025

IN THE MATTER OF AN APPLICATION UNDER SECTION 39 OF THE PRINCE EDWARD ISLAND LABOUR ACT R.S.P.E.I. 1988 CAP. L-1 (SUCCESSOR RIGHTS)

BETWEEN:

UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, LOCAL 1338

AND:

4 CORNERSTONE CONSTRUCTION INC.

APPLICANT

RESPONDENT

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

Mr. Raymond Mitchell
Unrepresented and not in attendance

DECISION

Background

The Applicant Union, on the 2nd day of August, 2006, filed with the Labour Relations Board of Prince Edward Island an Application under Section 39 of the *Labour Act, R.S.P.E.I. 1988, Cap L-1* (Successor Rights). The Respondent Company's Reply to this application was filed with the Board on the 25th day of August, 2006.

At paragraph 10 of its application, the Applicant sought relief in the form of " . . . a declaration that 4 Cornerstone Construction Inc. and 9119-3722 Quebec Inc. are and shall be treated as constituting one employer for the purposes of the *Labour Act* and that 4 Cornerstone Construction Inc. is therefore bound to the collective agreement between the Applicant and the Association of Commercial and Industrial Contractors noted in Paragraph 7(a)."

The Reply to the Application filed by the respondent denied that 9119-3722 Quebec Inc. Had ever sold its business or any part of its business, to 4 Cornerstone Construction Inc., or Stanford Carr? It also stated that neither 4-Cornerstone Construction Inc. nor Stanford Carr had ever leased any portion of 9119-3722 Quebec Inc., nor has any portion of 9119-3722 Quebec Inc. been transferred to 4 Cornerstone Construction Inc. or Stanford Carr. It alleged that 4 Cornerstone Construction Inc. and 9119-3722 Quebec Inc. are not under common management or control. The Respondent denies that it and 9119-3722 Quebec Inc. are common or related employers and further denied that it is a successor employer to 9119-3722 Quebec Inc.. The respondent alleged that the

application is without merit and requested that the Board dismiss the application, and failing a dismissal that a hearing be convened so the Respondent could appear and give evidence.

The hearing respecting these matters between the parties was convened on the 14th day of February, 2006. Neither the Respondent 4 Cornerstone Construction Inc., nor representatives of 9119-3722 Quebec Inc., nor legal counsel appeared at the scheduled hearing of which all parties were duly and properly notified.

Cases Considered

1. *International Brotherhood of Electrical Workers, Local 625 v. Halifax Electric Limited and Cleary Romans*, (January 28, 2006) N.S.L.R.B. Decision No. CIP-3029;

Statutes Considered

1. *Labour Act*, R.S.P.E.I. 1988, Cap. L-1, sections 39, 52 and 53.

Texts Considered

1. *Canadian Labour Law*, 2nd Ed., Hon. George W. Adams and Sandra J. Adams, (Aurora, Canada Law Book, 2006), para 15.520 - 15.550.

Evidence

The written evidence before the Board on these matters is in the form of sworn affidavit evidence submitted with the Application and with the Reply, each duly filed as noted above. There was one (1) composite exhibit containing nineteen (19) documents filed by counsel for the Applicant and tendered through its witnesses as Exhibit A-1. There was oral testimony received from two (2) witnesses called on behalf of the Applicant Union Local, their current Business Agent, Mr. Paul Chaisson, and Mr. Joel Arseneault. As noted above there were no representatives and no legal counsel in attendance at the hearing on behalf of the Respondent. The Chief Executive Officer of the Board indicated that he had been contacted initially by Eugene P. Rossiter, Q.C., and subsequently by Ian W. H. Bailey, Q.C., however, both of these lawyers advised the Board, in writing, that they were withdrawing as legal counsel for the Respondent company.

Issues

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

1. Whether 4 Cornerstone Construction Inc. and 9119-3722 Quebec Inc. were "employers" as defined in the *Act*;

2. If there are affirmative finding on the first issue, do successor rights apply such that 4 Cornerstone Construction Inc. is a successor employer to 9119-3722 Quebec Inc.; and
3. Whether there are grounds for granting the relief sought.

Preliminary Matters

The Board, at the commencement of the hearing, outlined the background of the case, noted that there had been only informal pre-hearing conferences held and cited the issues in the matter as cited above. Counsel for the Applicant advanced a Motion seeking a dismissal of the Respondent's Reply and an Order granting the relief requested by the Applicant. The Board opted to hear the verbal evidence of the two witnesses and further argument from the Applicant.

Decision

All of the evidence presented has been thoroughly reviewed by the Panel. There has been a careful consideration of the evidence in light of the submissions advanced by the respective Parties in relation to this Application for Successor Rights.

The Law

This Application is brought pursuant to the provisions of Section 39 of the *Act* which states:

39. (1) Where an employer sells, leases or transfers or has agreed to sell, lease or transfer his business or the operations thereof or any part of either of them, and

(a) either the employer or the purchaser, lessee or transferee or both of them is a party to or is bound by a collective agreement with a bargaining agent on behalf of any employees affected by such sale, lease or transfer;

(b) one or more bargaining agents have been certified as bargaining agent for any such employees;

(c) one or more trade unions have applied to be certified as bargaining agent for any such employees;
or

(d) one or more bargaining agents have given or are entitled to give notice under either section 21 or section 23 with respect to any such employees, unless and until the board otherwise directs, such collective agreement, certification, application, notice or entitlement to give notice continues in force and is binding upon such purchaser, lessee or transferee.

(2) Any such employer, purchaser, lessee or transferee, or any such bargaining agent or trade union may apply to the board for the resolution of any question or problem that, as a result of such sale, lease or transfer, has arisen or may arise with respect to any such collective agreement, certification, application, notice or entitlement to give notice.

(3) Upon such application being made, the board shall, by order, make such award, give such direction, or take such other action, as in its discretion the board considers appropriate, to resolve any such question or problem and, without restricting the generality of the foregoing, may by such order or subsequent order

(a) amend or rescind to such extent as the board considers necessary or appropriate any such collective agreement;

(b) revoke or amend any such certification or amend any such application for certification;

(c) modify or restrict the operation of any such notice or entitlement to give notice;

(d) determine whether employees affected constitute one or more appropriate bargaining units;

(e) if more than one collective agreement is to continue in force, designate which employees are to be covered by such agreements;

(f) modify or restrict the operation or effect of any provision of any such collective agreement and define the rights with respect thereto of any employees affected by such sale, lease or transfer;

(g) declare which trade union shall be the bargaining agent for such employees; and

(h) interpret any provision of any collective agreement.

(4) Until the board has disposed of any application under subsection (3), such purchaser, lessee or transferee, notwithstanding any other provisions of this Part, shall not be required to bargain with any such bargaining agent with respect to employees to whom the application relates.

(5) Where any application is made under this section, the board may make or cause to be made such examination of records or other inquiries and may hold such hearings and take such representation votes as it considers necessary and prescribe the nature of evidence to be furnished to the board.

(6) Where an employer who is a party to or is bound by more than one collective agreement reorganizes or intends to reorganize his operations so that employees covered by separate collective agreements are intermingled or will be intermingled, the board may, on application by such employer or any bargaining agent party to any such collective agreement, exercise the powers conferred on the board by this section and the provisions of this section shall apply.

(7) Where two or more municipalities are amalgamated, united, or otherwise joined together, or all or part of one such municipality is annexed, attached, or added to another such municipality, the provisions of this section apply. R.S.P.E.I. 1974, Cap. L-1, s.38.

Under the provisions of Part II of the *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.

Findings of Fact

The Board finds that the documentary evidence of the Applicant submitted with its Application, and those proffered at the time of the hearing through its witnesses, the oral testimony of its witnesses and the admissions made in the Respondent's Reply filed with the Board very clearly establish that both 4 Cornerstone Construction Inc. and 9119-3722 Quebec Inc. were "employers" as contemplated under the legislation.

The witnesses for the Applicant, in their testimony before the Board, which was corroborated by the documentary evidence presented, convinced this panel beyond any doubt that the materials, concrete forms, equipment, and tools of the trade employed by 4 Cornerstone Construction Inc. were the very ones that had been utilized by 9119-3722 Quebec Inc. in its operations in this province.

As pointed out by counsel for the Applicant, the sworn testimony of Mr. Stanford Carr, as contained in the Respondent's Reply to the Application, leads the Board to the inescapable finding that the involvement of Mr. Greg Ouelett, the principal owner and operator of 9119-3722 Quebec Inc., was key to the operations of 4 Cornerstone Construction Inc. conducted in this province.

In view of the tenor of the total evidence before it, the Board cannot find credibility in the denials of the Respondent as to the existence of "agreements" between 4 Cornerstone Inc. and 9119-3722 Quebec Inc.. The establishment of 4 Cornerstone Construction Inc. and 9119-3722 Quebec Inc. by Mr. Stanford Carr was little more than a ruse perpetrated by Mr. Greg Ouelett in concert with Mr. Stanford Carr for the sole purpose of Mr. Ouelett escaping the implications of the collective agreement between Mr. Ouelett's company and the Association of Commercial and Industrial Contractors of Prince Edward Island.

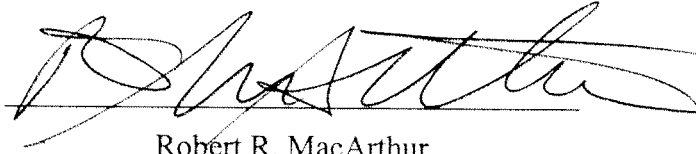
Conclusion

The Board, in light of these findings of fact, must conclude that 4 Cornerstone Construction Inc. and 9119-3722 Quebec Inc. were "employers" as defined in the *Act*.

In regards to the second issue before the Board, given its findings as to the nature of the operations of 4 Cornerstone Construction Inc. and the undeniable ties of those operations to those of 9119-3722 Quebec Inc., there indeed was a "transfer" of operations as contemplated under the provisions of Section 39 of the *Labour Act*. The Board rules accordingly.

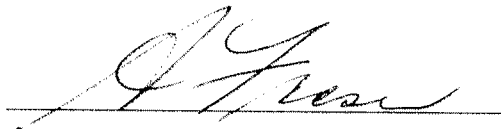
Further, as to the third issue, the Applicant has entirely established the basis for the grant of the relief being sought in this Application for Successor Rights. The Board concludes therefore that 4 Cornerstone Construction Inc. is the successor employer of 9119-3722 Quebec Inc., and

that 4 Cornerstone Construction Inc. is hereby ruled to be subject to and to be bound by the terms of the collective agreement between the Applicant, the United Brotherhood of Carpenters and Joiners of America, Local 1338, and the Association of Commercial and Industrial Contractors of Prince Edward Island.

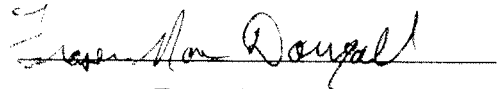


Robert R. MacArthur

Chair

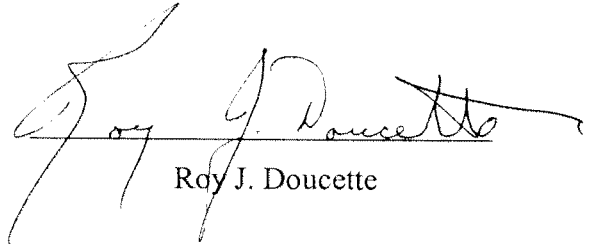


Alan Fraser
Member



Fraser MacDougall
Member

This Decision made by the Prince Edward Island Labour Relations Board on the 14th day of February, A.D., 2007, and issued under the hand of its Chief Executive Officer on the 11th day of March, A.D., 2007.



Roy J. Doucette