

File No. 07-005

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:

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

APPLICANT

AND:

ROCHE FLOORING AND MILLWORK INC.

RESPONDENT

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

Mr. Raymond Mitchell
Mr. Michael Roche

DECISION

Background

The Applicant Union, United Brotherhood of Carpenters and Joiners of America, Local 1338, 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*, on the 24th day of July, 2007, was certified as bargaining agent for the employees of the Respondent company employed as Carpenters, Carpenter Apprentices, Carpenter Helpers and Carpenter Working Foremen on Prince Edward Island by the Order of the Board, Serial No. 03-07, dated the 26th day of July, 2007.

The Respondent, by facsimile letter dated the 27th day of July, 2007, requested rescission of the July 26, 2007 Order because the Applicant had provided the wrong name of the Company to be certified.

There was an informal conference between the parties and the Board's CEO, Mr. Roy Doucette, to determine if the Applicant had indeed applied for the wrong company.

By his letter dated the 23rd day of October, 2007, Mr. Raymond Mitchell, counsel for the applicant union local, advised the Board of the results of the parties' negotiations by writing that:

The Labour Relations Board has advised the union that Mr. Roche has filed a reply with the Board indicating that the company named in the certification application is incorrect and should be "Bropar Construction". In these circumstances, the union consents to the revocation of the certification order against Roche's Flooring and Millwork Inc. (Serial No. 03-07). The union will rely on the Voluntary Recognition Agreement With Bropar that was filed with the Board on August 2, 2007.

Should Roche's Flooring and Millwork Inc. engage in carpentry work in the industrial/commercial sector of the construction industry, the union will exercise its rights under the related employer/successorship provisions of the Labour Act.

Statutes Considered

- (a) *Labour Act*, R.S.P.E.I. 1988, Cap. L-1, sections 20, and 54

Evidence

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

Issues

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

1. Whether the Board has jurisdiction under "Construction Industry" provisions of Section 54 of the *Act*;
2. Whether there are grounds for granting the relief sought.

Decision

The evidence presented in this matter has been given careful consideration by this Panel of the Board. This consideration of the evidence has been conducted in light of the submissions advanced by the respective Parties in relation to this Application for review of the certification order. The critical document in the Board's appreciation of these matters is the letter from Mr. Raymond Mitchell, counsel for the Applicant, as cited above.

The Law

This Application is brought pursuant to the provisions of Section 54 of the *Act*, and in particular Subsections 54(6) and (7) thereof. Under Part II of the *Act*, Construction Industry Labour Relations, Section 54 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 review of the documentation filed entirely satisfies the panel members that the grounds for acceptance of jurisdiction over the matters raised are fully established. The Board finds that the parties hereto have had significant negotiations in regards to all matters relevant to this application for review. Given the concessions made in the correspondence from the legal counsel for United Brotherhood of Carpenters and Joiners of America, Local 1338, the Board is also satisfied that the conditions precedent to a grant of an order rescinding the certification order of the 26th day of July, 2007 do in fact exist and are admitted by the Applicant.

Conclusion

The Board, in light of these findings of fact, has concluded that the circumstances of this case are ones which are completely appropriate for the exercise of the Board's powers under subsections 54(7) and 20(2) of the *Act* to revoke its order of the 26th day of July, 2007. The Board rules accordingly.



Robert R. MacArthur
Chair

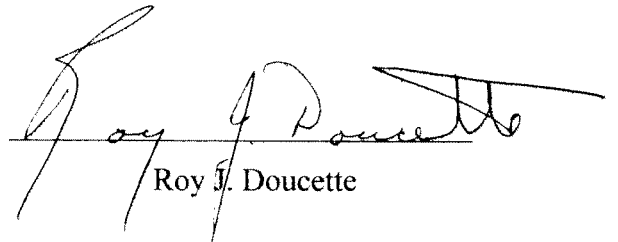


Mike Lund
Member



Fraser MacDougall
Member

This Decision made by the Prince Edward Island Labour Relations Board on the 18th day of December, A.D., 2007, and issued under the hand of its Chief Executive Officer on the 18th day of December, A.D., 2007.



Roy J. Doucette