



GOVERNMENT OF PRINCE EDWARD ISLAND
LABOUR RELATIONS BOARD

J. I. Revell, B. Comm., M.B.A.
Chairman

L. W. Brammer,
Chief Executive Officer

DEPARTMENT OF LABOUR
P.O. BOX 2000,
CHARLOTTE TOWN
PRINCE EDWARD ISLAND

DECISION

RE: APPLICATION FOR DECERTIFICATION

MAC KAY CONSTRUCTION LTD. & STERLING MAC KAY,

APPLICANT

-and-

LOCAL 721C, INTERNATIONAL UNION OF OPERATING ENGINEERS, RESPONDENT

This application was filed with the Board on May 14, 1974 and processed in accordance with the Regulations of the Prince Edward Island Labour Act. A hearing to consider the matter was held on June 10, 1974.

The Board, as directed by Section 19 of the Act, has given particular attention to the question of whether or not a majority of the employees in the bargaining unit no longer wish the trade union to act as bargaining agent on their behalf. In this regard, the Applicant filed, at the hearing on June 10, 1974, affidavits filed by four of the employees; the affidavits having been sworn on the 10th day of June 1974 before Thelma Francis, a Commissioner for taking Affidavits in the Supreme Court. Evidence produced at the hearing indicates that these affidavits were obtained under the direction of Mr. Norman Carruthers, Counsel for the Applicant. Mr. Carruthers advised the Board that he had met, on Mr. MacKay's premises and had arranged for Mrs. Francis to attend with him, and at approximately 8:00 a.m. on June 10, 1974, the four employees swore the affidavits which were presented as evidence.

The Board, in considering evidence of majority, is particularly concerned when it is apparent that the hand of the employer is present in a direct or indirect manner. The position of the Board in this regard has been specifically set forth in the case of Ramsay Washed Gravel Ltd., Applicant, and Local 721C, International Union of Operating Engineers, Respondent, in a Decision of the Board dated March 23, 1973.


"It has become the consistent practice of Labour Relations Boards in Canadian jurisdictions, developed over a significant period of time, to look with great concern on the involvement of management or its representatives in the preparation and submission of evidence purporting to represent the wishes of employees concerning their choice of bargaining agent. Specifically, Labour Relations Boards have recognized that management, by virtue of its commanding position in determining the economic well-being of its employees, can exert, either directly or indirectly, extensive influence on those employees.

Consequently, the Prince Edward Island Labour Relations Board, as well, has consistently refused to give much weight to petitions, letters and other interventions from employees where the hand of management has been clearly evident in the preparation and distribution of such documents. In the instant case, where the petition indicating the wishes of the employees has been prepared by Counsel for the employer, notwithstanding that such action may have been taken in good faith with every intention of assisting the wishes of the employees, such action must be considered sufficient to impair the application".

It appears very clear to the Board that in the instant case the circumstances are such that notwithstanding such action may have been taken in good faith, the action of Counsel for the employer in the preparation of affidavits and arranging for, and being present at the swearing of the affidavits, such action, as in the Ramsay Washed Gravel Ltd. case, must be considered sufficient to vitiate the application.

Consequently, the application for revocation is dismissed.

This Decision was taken by the Labour Relations Board on June 24, 1974 and is issued over the hand of the Chief Executive Officer.


L.W. Brammer

CHIEF EXECUTIVE OFFICER.