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GOVERNMENT OF PRINCE EDWARD ISLAND
LABOUR RELATIONS BOARD

John B. Comm, M.B.A.
Chairman

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

Robert G. Chamber,
Chief Executive Officer

D E C I S I O N

APPLICATION FOR ACCREDITATION

-Between-

CONSTRUCTION ASSOCIATION OF PRINCE EDWARD ISLAND

APPLICANT

-and-

UNITED BROTHERHOOD OF CARPENTERS AND JOINERS,
LOCAL 1538, ET AL

RESPONDENT

APPLICATION DATE: March 20, 1975

DATES OF HEARINGS: June 16th and June 17th, 1975

1. Status of The Applicant

The Board decides that the Prince Edward Island Construction Association is an "Employer's Organization" within the meaning of Section 48 A (g) of the Act.

- (a) During the several days of hearings, the Board heard specific interventions concerning the ability of the Applicant to properly represent the interests of its individual members in the field of collective bargaining. Questions were raised relating to the Applicant association, its Constitution and By-laws and its legal status.

In an earlier decision (case # 4-74, Decision dated December 2, 1974) the Board had dismissed the Application for Accreditation by the present Applicant citing certain inadequacies in the Constitution and By-laws of the Association. In the present Application the Board has reviewed very carefully the amended Constitution and By-laws filed as part of the Application under the certificate of F.W. Curtis, Association Secretary. The By-laws, as enacted on January 28, 1974, and amended on December 12, 1974, and further amended on February 28, 1975, represent, in the opinion of the Board, documents which properly establish the existence of the Association.

The Board, in reaching its decision concerning the status of the Association, has been particularly concerned with its representative nature. During the hearings, questions have been raised with regard to the adequacy or inadequacy of the Constitution and By-laws in this regard. Consequently, the Board has looked to the question of "What is adequate representation?" Are there guarantees of representation in such critical areas as negotiations, ratification, etc.? Simply stated, are there assurances that the traditional right of the employer to conduct his own negotiations, while being altered in form by the principle of accreditation, will not be totally denied by the absence or inadequacy of representation in the collective bargaining procedures of the Association.

The Board is satisfied that Section 12 of the By-laws when read with Section 7, provides adequate representation for purposes of the Act. In making this decision, the Board is aware that "adequate representation" may never be unanimously accepted as such until each Association member has membership on the Board of Directors. Yet, the provision for elected representation, where all sectors and all individual members are eligible and free to participate, does, in the opinion of the Board, provide for adequate representation for purposes of the collective bargaining functions established in the legislation.

Counsel for the Respondents, particularly Mr. Roy Filion and Mr. William Lea, have raised serious objections to the collective

bargaining procedures of the Association, particularly those established under the provisions of Section 38 (g) of the By-laws. Section 38, in the opinion of the Board, as it establishes the operation of the Labour Relations Committee, is essentially procedural in nature. Providing, as it does, for representation of the various trade employees, the Section attempts to extend the representation principle beyond that established in the appointment of the Board of Directors. While one might argue that the composition of the Labour Relations Committee is not ideal or that its procedures are not the most efficient, the Board is of the opinion that its composition and procedures, as defined in Section 38 of the By-laws, is not offensive to the representative nature of the Association.

Certain objections to the status of the Applicant were based on a decision of the Labour Relations Board of Nova Scotia (Construction Industry Panel) in the Application of the Construction Association Management Labour Bureau Limited, the decision dated January 10, 1974. Without discussing the merits of the Nova Scotia Board's decision, this Board is satisfied that the inadequacies found to exist in the Articles of Association of the Applicant in that case do not exist in the Application before this Board.

2. Appropriate Unit

The Board decides that the unit appropriate for collective bargaining, in accordance with Section 48 D (2) (a) of the Act, shall be described as:

"All unionized employers engaged in the Industrial and Commercial sector of the Construction Industry. The geographic area for these purposes is to include all of the Province of Prince Edward Island".

The Applicant has attached as part of its application a detailed list of construction activities (Item # 2 appended to the Application) which it claims to represent most on site activities associated with construction projects. The Board, while agreeing with the Applicant that the list is inclusive of most activities, does not at this time accept that all of the listed activities would fall within the Industrial and Commercial sector. Certain ambiguities in the list, notably in such activities as curbing and paving, sidewalks, storm sewers, suggest to the Board that a definite decision on the inclusion of employees engaged wholly or in part in these and other such activities can only be made after thorough investigation of the particular nature of the work. This might properly be done when bargaining rights are claimed for the affected activities. These activities are rather few in number and involve few, if any, unionized

employers at this time. Consequently, the Board does not feel impeded in any practical sense from reaching a decision concerning the majority status of the Applicant within the general description of the appropriate unit outlined above.

The Board has reviewed extensive evidence and argument presented by representatives of several national employer associations. Mr. Filion, Counsel for the Boilermaker Contractors Association and the Canadian Automatic Sprinklers Association, has presented persuasive argument that member firms in these Associations have developed bargaining patterns that are national in scope and that these bargaining patterns have produced collective agreements that have well served the respective industries. Mr. Filion has argued that transfer of bargaining rights to the Applicant Association would be damaging to the industry and would be inconsistent with the intent of the legislation. Evidence was presented alleging that existing pension plans, training programs and other benefits would be seriously damaged or made ineffective by such transfer of bargaining rights.

Notwithstanding these arguments, the Board is of the opinion that the employers represented by these National Associations should not be excluded from the bargaining unit. It is clear to the Board that the Act is designed to include all employers engaged in the sectors defined in the Act. The Accreditation principle established by the Act, while innovative and possibly disturbing to existing bargaining patterns, does not allow, in the opinion of the Board, for the carving out of national bargaining groups or single employers from their appropriate sectors.

The Board does not accept the argument that institutional construction, churches, schools, hospitals, etc., fall outside the industrial and commercial sector. To accept this argument would, in the Prince Edward Island context, give little meaning to the accreditation part of the Act.

The Board decides that pipeline construction work falls outside the industrial and commercial sector of the construction industry.

The Board decides that maintenance and service work performed on completed installations does not fall within the meaning of "construction industry" under Section 48 A (c) of the Act.

3. Majority

The Board is satisfied that the Applicant Association has as members

a majority of the unionized employers in the unit described as appropriate for collective bargaining. (See Number 2 above)

Accordingly, the Board will issue an Accreditation Order.

This Decision was made by the Labour Relations Board on October 7, 1975 and is issued over the hand of its Chief Executive Officer.



L.W. Brammer
CHIEF EXECUTIVE OFFICER.