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GOVERNMENT OF PRINCE EDWARD ISLAND  
LABOUR RELATIONS BOARD

J. J. Revel, B. Comm., M.B.A.  
Chairman

L.W. Brammer,  
Chief Executive Officer

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

D E C I S I O N

RE: APPLICATION FOR CERTIFICATION

-Between-

CONSTRUCTION AND GENERAL LABORERS WORKING IN  
CONSTRUCTION, INDUSTRIAL AND COMMERCIAL, LOCAL 1079A, APPLICANT

-and-

ATLANTIC WHOLESALERS LIMITED, RESPONDENT

This application was filed with the Labour Relations Board on March 26, 1975 and processed in accordance with the Rules of Procedure of the Board. The Board reviewed the documents filed in support of the application and a hearing was held on May 9, 1975.

Counsel for the Respondent, in its Reply to the Application for Certification and in representation made at the hearing, has argued that the application should be refused on the grounds that the Applicant Trade Union has no jurisdiction to apply for Certification for the employees of Atlantic Wholesalers Limited. This argument is based essentially on the contention that the Constitution of the Laborers International Union of North America, and specifically Article 3 of the Constitution, does not provide for admission to membership of the classification of employees claimed by the Applicant to be a unit appropriate for collective bargaining. Counsel for the Employer has argued further that, since this is the case, the Applicant Local Union could not claim to bring into membership the classification of employees referred to in the Application.

In reply, the Applicant has filed a letter, dated January 10, 1975, and signed by the General President of the International Union, Mr. Peter Fosco, in which, among other things, Mr. Fosco states, "you are further authorized to organize all workers on an industrial all employee basis in all plants and factories and you shall be responsible for the organizing and the servicing of all such workers in Prince Edward Island". The Applicant argues that this letter to Local Union 1079A which is written under the powers of the General President (Article IX, Section 11 (a) and (b) of the International Constitution) is sufficient to extend the constitutional jurisdictional powers of the International Union to include the designated employment classifications at Atlantic Wholesalers Limited.

The Board in deciding the extent to which it should investigate the Application, is aware of an important basic principle of the Prince Edward Island Labour Act, designed to allow employees to join the union of their choice and to be represented accordingly in collective bargaining. However, the Board is also aware that it does have a responsibility to inquire as to whether or not the Applicant trade union may, among other things, constitutionally admit the employee who wish to obtain membership. This responsibility extends to Labour

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Relations Boards generally, and is most clearly set out in the Decision of the Supreme Court of Canada in Metropolitan Life Insurance vs International Union of Operating Engineers, cited in 1970 C.L.L.C. at paragraph 14, 008. That Decision, as rendered by the then Chief Justice, P.C. Cartwright, said in part: "If the Board had addressed itself to the question whether 55% of the employees were members of the Union, within the meaning of Section 7, sub-section (3) of the Act, its Decision could not have been interfered with by the Court, although it appeared that the Board, in reaching it, had erred in fact or in law or in both. But it is clear, from the reasons of the Board read as a whole and, particularly from the excerpts therefrom which I have quoted above, that the Board did not perform the task imposed upon it by Section 7". (Emphasis added).

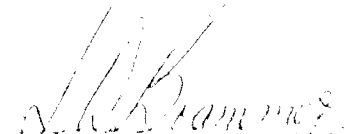
It has become well established practice, subsequent to the Metropolitan Life case, for Labour Relations Boards to direct themselves to the question not only of majority, but majority where membership is available. Where there is question that membership may not be constitutionally available to employees included in the Application, the Board must direct itself to an investigation to decide the question.

Consequently, the Board has given serious consideration as to whether or not Local 1079A has the constitutional jurisdiction to include as members the classifications of employees applied for at Atlantic Wholesalers Limited. Notwithstanding certain concerns that might be expressed about the rather sweeping powers given to the General President in Article IX, Section 11 (b) of the International Constitution and notwithstanding the broad generalization set out by the General President in his authorization to Local 1079A, the Board is of the opinion that sufficient powers do exist within the office of the General President to, in effect, extend membership rights to the employees in question. The Board is also of the opinion that the letter of the General President referred to above is of sufficient authority to extend the membership right as it would effect Local 1079A. The Board, therefore, is of the opinion that Local 1079A does have the constitutional jurisdiction to admit to membership the employees as designated in the application and, therefore, has the jurisdiction to apply to the Board for certification for a unit of the said employees.

The Board is also aware of a broadening representation pattern within the industrial relations system. The Applicant local, for instance, represents a rather general classification of workers of the Fathers of Confederation Memorial Trust (Confederation Centre) in Charlottetown and similar Locals of the International have obtained broad representation authority in other Provincial jurisdictions.

The Board is satisfied that the bargaining unit applied for is appropriate for collective bargaining and that the Applicant Trade Union has a majority of the employees in the bargaining unit applied for. Consequently, the Application for Certification is approved and a Certification Order will be issued.

This Decision was made by the Labour Relations Board on May 19, 1975 and is issued over the signature of its Chief Executive Officer.

  
CHIEF EXECUTIVE OFFICER.