



GOVERNMENT OF PRINCE EDWARD ISLAND  
LABOUR RELATIONS BOARD

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

W. S. MacKinnon  
Chief Executive Officer

DEPARTMENT OF LABOUR  
P.O. BOX 2000  
CHARLOTTETOWN  
PRINCE EDWARD ISLAND  
CIA 7N8

DECISION

- between -

Local 721C  
International Union of Operating Engineers

APPLICANT;

- and -

C. M. McLean Limited, New Annan, P.E.I.

RESPONDENT;

This Application was received by the Labour Relations Board on June 13, 1980, and processed in accordance with Board Regulations. A Hearing was held on July 15, 1980.

The Employer filed a reply to the Application on July 2 requesting a Hearing, and advising that arguments would be presented requesting the Board to deny the Application "on grounds that the Union does not have the jurisdiction under its Constitution and By-Laws to claim the security personnel at the C. M. McLean Limited plant in New Annan."

At the Hearing, the Employer argued that the By-Laws of the Applicant Local Union had the effect of restricting the craft jurisdiction of the Local Union. Specifically, the Employer argued that the words (hoisting and portable) appearing in parentheses under the words "International Union of Operating Engineers" on the cover and covering page of the Local Union By-Laws, had the effect of limiting the Applicant Local's craft jurisdiction to Article 13, section 1(b), of the Union's International Constitution. This, in turn, by argument of the Employer would limit the Applicant's craft jurisdiction to the general construction and roadbuilding classifications included in that sub-section. The broader jurisdiction described in Article XIII, section 1(a), which would allow the Applicant to include a broad range of industrial, manufacturing and processing plants and which would include the C. M. McLean food processing plant at New Annan, would therefore not be available to the Applicant Local Union, and by extension the employees included in the Application would be unable to become members in good standing.

The Applicant argued that such interpretation was unduly restrictive. Citing certification orders which it had obtained in Nova Scotia and Prince Edward Island encompassing a broad range of work and including such diverse employment units as hospitals, retail building outlets and ambulance drivers, the Applicant argued that a more realistic interpretation of the constitutional jurisdiction would include Article XIII in its entirety.

The Board, in considering the above arguments, has reviewed the By-Laws of the Local Union and the Constitution of the International Union of Operating Engineers. Article III - Craft Jurisdiction of the Local By-Laws states "our craft jurisdiction shall be that defined by the Constitution of the International Union of Operating Engineers." Article XIII - Craft Jurisdiction of the International Constitution states "the International Union of Operating Engineers shall exercise and maintain jurisdiction over all persons engaged in the following crafts," and goes on to list various work classifications under two sub-sections:

Section 1(a) Stationary Engineers' craft jurisdiction.

Section 1(b) Hoisting and Portable Engineers' craft jurisdiction.

The question then arises, does the inclusion of the words (hoisting and portable) in the manner described above restrict the craft jurisdiction of the Local to those classifications listed under Article XIII, Section 1(b)? The Board is of the opinion that it does not. Article III of the Local Constitution makes no reference to such limitations nor does it restrict the jurisdiction in any other way. Other sections of the Local Constitution in setting out directions and guidance to the Local, make specific reference to Articles and Sections of the International Constitution. It is the opinion of the Board that this lack of specific restriction in Article III, when it is considered with the experience of the Applicant Local in both Nova Scotia and Prince Edward Island, lends overwhelming weight to the Applicant's claim to jurisdiction and the resultant constitutional power to admit the affected employees into membership.

This interpretation by the Board is consistent with its overall policy to recognize the broader nature of the trade union movement, reflecting to some extent the rather diversified operations of modern business. In this respect the decision of the Board in the case of Canadian Food and Allied Workers Local P282 and Schurman Supply Limited, issued June 1, 1978, sets out in more detail the Board's general policy. Paragraphs 5 and 6 of that Decision follow:

"The Board, while not disagreeing with this interpretation, is of the opinion that it must examine beyond the literal meaning of the Constitution, recognizing that trade unions, like business firms, are living entities, adaptive to changing circumstances, and often their own actions are a more appropriate reflection of their character.

The Board then, in keeping with its own practice and that generally followed by Labour Relations Boards in other Canadian jurisdictions, looks to the practice of the trade union in its interpretation of its own Constitution and By-Laws. In the instant case, it is apparent that the Local Union, acting with the apparent approval of representatives of the parent body has interpreted the Constitution to be sufficiently broad to include the employees affected by this Application. The Union has, as well, been able to identify instances where retail employees are represented by the Union, and the Board is aware of other similar situations. While it may be argued that retail building supplies and hardware is an extension of representation beyond that normally or traditionally associated with the Applicant Union, the Board is of the opinion that in the absence of a specific constitutional bar to the employees affected by the Application, the interpretation by the Union of its own Constitution and its readiness to accept these employees into full membership should be, and is, the most compelling argument in the Board's determination."

The Board has investigated the relationship between the regular full-time security personnel at the plant in relationship to certain part-time employees. The Board finds that the unit appropriate for collective bargaining should be comprised of all regular full-time security watchmen and would therefore exclude any part-time employees.

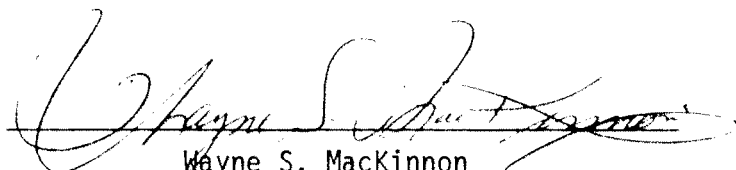
The Board is satisfied that a majority of employees in the above unit wish to be represented by the Applicant Union.

The Certification Order will be issued accordingly.

This Decision was made by the Labour Relations Board on July 17, 1980, and is issued over the hand of its Chief Executive Officer.

PANEL:

J. J. Revell, Chairman  
Harry Snow, Member  
George McInnis, Member

  
Wayne S. MacKinnon  
CHIEF EXECUTIVE OFFICER