



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
C1A 7N8

DECISION

RE: Application for Certification

BETWEEN:

International Union of Operating Engineers,
Local 902

APPLICANT

AND:

Schurman Supply (Charlottetown Branch)

RESPONDENT

AND:

Certain Employees of Schurman Supply
(Charlottetown Branch)

INTERVENOR

AGENT FOR THE APPLICANT - BLAIR MacKINNON
COUNSEL FOR THE RESPONDENT - DAVID H. JENKINS, Q. C.
COUNSEL FOR THE INTERVENOR - PAUL D. MICHAEL

On April 29, 1988 the International Union of Operating Engineers, Local 902 (hereinafter referred to as "I.U.O.E.") filed an application for certification in Form 1 with the Labour Relations Board (hereinafter referred to as the "Board") which application dealt with certain employees of Schurman Supply (Ch'town Branch). On May 10, 1988, notice was received by the Board that certain employees of Schurman Supply would be opposing the application. On May 17, 1988, the Respondent, Schurman Supply, filed with the Board a Reply to Application for Certification in Form 5.

The matter was scheduled for hearing on June 7, 1988. At that time, Counsel for the Respondent, Schurman Supply, and Counsel for certain employees of Schurman Supply raised certain preliminary objections. The first objection deals

with whether or not the Board has jurisdiction to hear the matter currently before it in light of the fact that the Constitution of the applicant was not filed with the present application before the Board.

Section 3 of the Regulations made pursuant to the Labour Act, R.S.P.E.I. 1974, Cap. L-1 deals with an application by a trade union for certification as bargaining agent and the relevant portions thereof are outlined below:

- "3. (1) An application by a trade union for certification as bargaining agent pursuant to the Act shall be made in Form 1.
- (2) Concurrently with the filing of an application for certification, the applicant trade union shall file with the Board the material upon which it relies to establish its right to certification and such material shall include
- (a) a list of persons in the proposed bargaining unit who wish that the applicant trade union be certified as bargaining agent on their behalf;
 - (b) evidence that the persons in the list referred to in clause (a) wish that the applicant trade union be certified as bargaining agent on their behalf;
 - (c) a copy of its constitution, rules and bylaws, or other instruments or documents containing a full and complete statement of its objects and purposes;
 - (d) a list of its officers.
- (3) The material filed by the applicant trade union under clauses 2(a) and (b) shall be for the information of the Board only and shall not be available to or open for inspection by any other party to the proceedings.

The documents filed with the Board on April 29, 1988 would satisfy the requirements of Subsections 3(2)(a), 3(2)(b) and 3(2)(d) of the Regulations. However, the applicant did not file its Constitution concurrently with the application for certification as required by Subsection 3(2)(c) of the Regulations.

The Board is of the view that the word "shall" as used in subsection 3(2) of the Regulations is mandatory and thus any applicant trade union must comply with the filings enumerated in subsection 3(2) of the Regulations. This position is supported by a review of Subsection 26(e.2) the Interpretation Act, R.S.P.E.I. 1974, Cap. I-6.1 which states 'shall' "is to be construed as 'imperative'".

The Board has determined that the legislation dealing with the filing of applications must be complied with in order for the Board to have the initial jurisdiction to deal with the matter. As no Constitution of the applicant was filed concurrently with this application, the Board rules it does not have the jurisdiction to hear the application presently before it. This position is reinforced by a review of the case authorities.

In Hawker Siddeley Canada Limited v. Labour Relations Board (Nova Scotia) (1975), 15 N.S.R. (2d) 613 (N.S.S.C., T.D.), [affirmed (1976), 24 N.S.R. (2d) 670 (N.S.S.C., A.D.)], it was argued that the Board had exceeded or declined its

jurisdiction. A Constitution had been filed with the application in that case, however, it was argued that the Constitution filed was not the Constitution of the applicant local union and thus, the Board had no jurisdiction to deal with the matter. The relevant section of the Regulations made by the Nova Scotia Labour Relations Board pursuant to the provisions of the Trade Union Act, Stats. N.S. 1972, C. 19 stated:

"9(2) An application for certification shall include, or be accompanied by,

(a) a copy of the constitution, rules and by-laws of the union;"

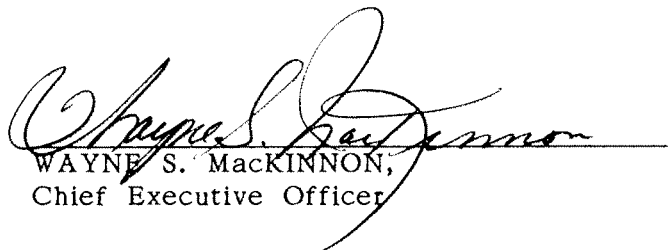
Cowan, C.J.T.D. stated with respect to this point at page 621:

"The first ground upon which the application is based, that is, that the Board did not have before it a proper application for certification, raises, in my opinion, a matter which is a collateral or preliminary question going to jurisdiction and, therefore, open to review. It seems quite clear that if, in fact, no copy of a constitution or of rules and by-laws of the Union accompanies the application for certification, the application for certification is not one which is provided for by the Regulations of the Board and, in particular, Regulation 9. The jurisdiction of the Board is to deal with an application by a trade union for certification and, if there is no application for certification which complies with the Regulations, and with the provisions of the Act itself, the Board is without jurisdiction."

The Board has also considered Section 47 of the Labour Act and Section 27 of the Regulations made thereunder and has concluded that those sections cannot be used in this particular instance to give the Board jurisdiction.

For the foregoing reasons, the Board rules that it does not have jurisdiction to deal with the application for certification filed in this matter on April 29, 1988 by I.U.O.E. As this disposes of the matter currently before the Board there is no necessity to rule on the other preliminary matters raised.

This decision was made by the Labour Relations Board on June 24th, 1988, issued under the hand of its Chief Executive Officer.


WAYNE S. MacKINNON,
Chief Executive Officer

M. Lynn Murray - Vice-Chairman
Ray McBride - Member
Lloyd Weeks - Member