

Application No 88-007



**GOVERNMENT OF PRINCE EDWARD ISLAND
LABOUR RELATIONS BOARD**

M. Lynn Murray, B.B.A., LL.B.
Chairman

Roy J. Doucette
Chief Executive Officer

DEPARTMENT OF LABOUR
P.O. BOX 2000
CHARLOTTETOWN
PRINCE EDWARD ISLAND
C1A 7N8

IN THE MATTER OF: **AN APPLICATION FOR CERTIFICATION BY
CONSTRUCTION AND GENERAL LABOURERS' UNION,
LOCAL 1079A**

BETWEEN:

**CONSTRUCTION AND GENERAL LABOURERS'
UNION, LOCAL 1079A**

APPLICANT

AND:

WEVEA CANADA PARTNERSHIP LIMITED

RESPONDENT

COUNSEL FOR THE APPLICANT - J. GORDON MacKAY
COUNSEL FOR THE RESPONDENT - EUGENE P. ROSSITER

DECISION

1. Application No. 88-007 involves an Application in Form 1 being filed by the Applicant with the Labour Relations Board (hereinafter referred to as the Board) on September 15, 1988 requesting a certification order to issue for the employees of the Respondent. Supporting documentation was also filed in accordance with the Labour Act, R.S.P.E.I. 1974 Cap. L-1 and the Regulations made pursuant thereto.

2. The Respondent filed a Reply in Form 5 with the Board on October 5, 1988. A hearing was then scheduled by the Board and was in fact held on November 22, 1988. Both counsel agreed at the hearing that the evidence taken by the Board on November 10, 1988 dealing with an Unfair Labour Practice Complaint involving these same two parties would form part of the record for this Application.

3. A review of Section 12 of the Labour Act, supra, clearly indicates the Board must be satisfied on a number of issues before it is to grant a Certification Order. The relevant portions of Section 12 state:

"(1) Where a trade union makes application for certification under this Part, the board shall determine whether the unit in respect of which

the application is made is appropriate for collective bargaining.

(2) The board may, before certification, either to make the unit appropriate for collective bargaining or for other good reason, include additional employees in or exclude employees from the unit.

(3) For the purposes of subsections (1) and (2) and for the purpose of determining whether a majority of the employees in the unit wish the applicant trade union to be certified as bargaining agent of such employees, the board shall

(a) make, or cause to be made, such examination of records or other inquiries and hold such hearings as it deems necessary;

(b) take such other steps as it deems appropriate to determine the wishes of the employees in the unit as to the selection of a bargaining agent to act on their behalf including, whenever the board deems it necessary, the taking of a representation vote or votes of such employees."

4. After hearing the evidence and the submissions of both parties, the Board is satisfied that the Applicant is a trade union within the meaning of the Labour Act, supra and so finds. This point was also agreed to be both parties.

5. On the issue of what is an appropriate unit, the Board finds that the unit claimed in paragraph 6 of the Application is appropriate and more specifically,

"all employees working as lap cutters, hole punchers, press operators, centre forge operators, riveter operators, cut off operators, belt stripper operators, grinding operators, gluing operators, riveter and plate operators, bender operators, urethane operators, for the employer at Montague, Kings County, Prince Edward Island excluding foremen, those above the rank of foreman, and office staff."


The Board finds that any employees of the Respondent who do not fall into the category of foreman, office staff or employees above the rank of foreman form part of the unit. In fact, this point was also agreed to by Counsel for both parties.

6. Turning finally to whether or not a majority of employees support the Applicant, the Board was not satisfied it had sufficient evidence on the support of the employees before it to grant certification. As a result, the Board exercised its discretion pursuant to Subsection 12(2)(b) of the Labour Act, and ordered a representation vote. This vote was conducted by the Chief Executive Officer on December 1, 1988 and the results have been tabulated. Three votes were in sealed ballots as they were contested. The Board disallowed the vote of George Sturgess as the Unfair Labour Practice Complaint had not been upheld and thus he stood as an employee dismissed for cause. The vote of Yvonne Vanowerkerk was also disallowed as she was not included in the appropriate unit as determined by the Board in paragraph 5 hereof. Because the ballot of Doug Singleton would have no effect on the

results of the vote, it was excluded from the count. The results of the vote clearly indicate that the majority of the employees of the Respondent do not support the present Application.

7. In light of the foregoing, the Board dismisses the Application for Certification currently before it.

This Decision made by the Labour Relations Board on December 2, 1988 and issued under the hand of its Chief Executive Officer.



ROY J. DOUCETTE
CHIEF EXECUTIVE OFFICER

PANEL:

M. Lynn Murray, Chairman
Ted Crockett, Member
Harry Snow, Member