



GOVERNMENT OF PRINCE EDWARD ISLAND  
LABOUR RELATIONS BOARD

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Chief Executive Officer

DEPARTMENT OF LABOUR  
P.O. BOX 2000  
CHARLOTTETOWN  
PRINCE EDWARD ISLAND  
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D E C I S I O N

RE: APPLICATION FOR DECLARATION OF ONE-EMPLOYEE STATUS PURSUANT TO SECTION 7(3) OF THE LABOUR ACT

BETWEEN: THE UNITED BROTHERHOOD OF CARPENTERS AND JOINERS, LOCAL 1338  
AND LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA LOCAL 1079A APPLICANTS

- and -

PREBILT STRUCTURES LTD. and WILLIAMS, MURPHY & MacLEOD (1971) LTD. RESPONDENTS

Counsel for the Applicants - David Hooley

Counsel for the Respondent, Prebilt Structures Ltd. - David Jenkins, Q.C.

Mr. Norman MacLeod attended the hearing on behalf of Williams, Murphy & MacLeod (1971) Ltd., and Mr. Clifford Lee attended the hearing on behalf of Prebilt Employees' Association.

1. This is an Application requesting that the Board exercise its jurisdiction under Section 7(3) of the Act and declare that Prebilt Structures Ltd. (hereinafter referred to as "Prebilt") and Williams, Murphy & MacLeod (1971) Ltd. (hereinafter referred to as WMM) as constituting one employer for purposes of the Act.

The applicants have also filed application, pursuant to Section 38 of the Act, the Successor Rights section. The applicants requested that the Board join the two applications. Upon consideration, the Board declined to do so and proceeded with the Section 7(3) application.

2. Section 7(3) reads:

"Where, in the opinion of the Board, associated or related activities are carried on by or through more than one corporation, individual, firm, syndicate or association or any combination thereof, under common control or direction, the Board may treat the corporations, individuals, firms, syndicates or associations or any combination thereof as constituting one employer for the purposes of this Part."

3. Section 7(3) is contemplated to provide a mechanism which will preserve the integrity of bargaining relationships which might otherwise be compromised where contractual changes in corporate or business relationships develop or where organizational changes among various entities have taken effect. Consequently, the Board will view the results of such changes, the projected as well as the present, with great care when exercising its discretion under the Section. This is particularly important where related business activities are being carried on by two or more entities through which runs a thread of common direction or control.

As the Ontario Labour Relations Board, interpreting a similar section of the Ontario Act, stated in the Brant Erecting and Housing case, "Section 1(4) ensures that the institutional rights of a union and the contractual rights of its members will attach to a definable commercial activity rather than the legal vehicle(s) through which that activity is carried on."

4. Prior to reaching its decision, the Board is directed towards three questions:
- (a) Is there in existence more than one corporation, firm or business entity?
  - (b) Are the entities under common control or direction?
  - (c) Are the activities described in the Application related or associated activities as contemplated by Section 7(3)?
5. There is no disagreement that Prebilt and WMM are related entities, each with its own corporate identity, shareholders, directors and officers.
6. At first glance, it may seem that the two entities are obviously under common control and direction. There is significant relationship of shareholders, directors and officers. The MacLeod family has a strong relationship with both firms, and the activities of the officers seem to suggest a hand-in-glove type of endeavour.

The firms are located in the same general premises, there is some interchange of employees at the management level. From time to time, there is also a sharing of equipment and facilities, either by formal lending or leasing agreements or other ways; and there is an obvious public impression that the two firms are closely linked.

Counsel for Prebilt has argued, however, that there is sufficient autonomy in the management of Prebilt to distinguish the control of that Company from WMM. The Board agrees that there is significant autonomy vested in the day-to-day management of Prebilt, particularly in its Manager, Gary MacLeod. However, Gary MacLeod's own evidence is that significant management policy issues are decided by the directors of Prebilt, essentially the same directors who control WMM. This leads to

the inescapable conclusion that the two companies are under common control and direction as contemplated by Section 7(3); and the Board so decides.

7. Section 7(3) also directs the Board to examine the activities involved and determine whether or not they are associated or related. Section 7(3) does not specify whether or not the activities must be carried on simultaneously; the Board would be of the opinion that to require such congruency would be unnecessarily restrictive. In this case, there is no disagreement that the activities in question have been carried on simultaneously or in the same general time frame.

WMM operates in what is often referred to as the general construction segment of the construction industry. It is recognized as a significant player and has been involved in major building projects for many years. It is a unionized company and, through the P.E.I. Construction Association's status as the accredited bargaining agent, WMM is a signatory to several collective agreements, including those with the applicants.

WMM operates in the commercial and industrial sector of the industry. The sector is not precisely defined, either by legislation or by collective agreement. It may best be described as that area of business, industrial and institutional construction that is distinguished from residential construction.

Residential construction is also a broad term, encompassing not only single family units but duplexes, apartment buildings, and, in the opinion of some, motels and hotels. Relatively large developers are involved in residential construction, and various government agencies are involved in the construction of public housing. The sector has been generally a non-union sector, but certain large-scale residential projects, using the broad definition of residential construction, may well be considered to be within the scope of the unionized sector.

The Board is of the opinion that Prebilt and WMM are carrying on related activities as contemplated by Section 7(3). Each company is in the construction business; each requires similar and often identical skills, materials and equipment. Evidence indicates that Prebilt has gradually increased its capacity to take on large projects. It has progressed from a company primarily engaged in in-plant assembly of single-unit residential homes and their on-site erection, to a company which is actively engaged in construction and renovation projects which are primarily on-site and which are other than residential. This progression in Prebilt's activities is vividly illustrated by its successful tendering and completion of the Sherwood Civic Centre.

The Board emphasizes that, in its opinion, whether or not a project is publicly tendered or privately negotiated; or whether a project is carried out by project management, cost plus, or on a general contractor basis is irrelevant to a Section 7(3) determination.

Furthermore, the fact that Prebilt is engaged in wood-frame construction, defined as that which falls within Section 9 of the National Building Code, and WMM does primarily steel and masonry construction, Section 3 of the Code, is of itself insufficient evidence that the two companies are not engaged in related activities.

8. Upon finding that Prebilt and WMM are under common control or direction and that the two companies are carrying on related or associated activities, Section 7(3) provides for a discretionary decision from the Board in the words: "The Board may treat . . . . as constituting one employer for the purposes of this part."

As stated earlier, Section 7(3) is concerned with the preservation of bargaining rights. The Board is therefore directed to examine the effects of the Prebilt/WMM relationship and to determine if the Applicants' established bargaining rights have been jeopardized or impaired by the activities of the companies involved.

Counsel for the Applicants relied extensively on the decision of the Alberta Labour Relations Board in Empire Ironworks and Emron Management Inc. and the National Association of Bridge, Structural and Ornamental Ironworkers Local 720, 13 CLRBR (N.S.), April 4, 1986. At Page 187 that decision is particularly incisive:

"One of the purposes of the section is to prevent the artificial erosion of properly obtained bargaining units by corporate reorganization. In this case it is the Board's view that Emron was created, and continues to be operated for the purpose of enabling Empire Iron Works Ltd. to bid on and obtain work in the same market place as it has always done without being fettered by the bargaining obligation that is fixed by virtue of Certificate No. 145-84. We see no other purpose. We are convinced, on all the evidence, that this was the motive behind its creation and continued operation. Section 133 is intended, in part, to prevent this type of situation."

The evidence in the case before the Board does not support a similar conclusion. It is clear that Prebilt and WMM have operated and continue to operate in two distinct sectors of the construction industry; one unionized, the other non-unionized. Furthermore, the evidence shows that Prebilt has been engaged in its present activities for many years. There is no abrupt or sudden change or direction that would point to a strategy designed to undermine the applicants' status as bargaining agent, with a resulting loss of work for their members.

The Board is satisfied that Prebilt has been engaged in construction work in areas where unionized companies, including WMM, would have little or no chance of obtaining the work. There is no convincing evidence which would lead to the conclusion that Prebilt is a spinoff from WMM designed to give the combined companies a competitive advantage in the

area of work normally performed by the Applicants' membership. There is no evidence that employees have been moved from one company to another as part of a strategy designed to frustrate the bargaining rights of the Applicants.

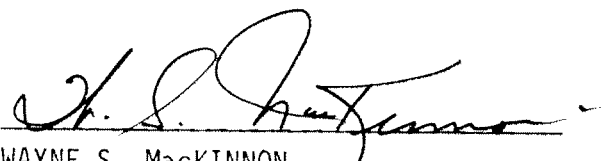
Consequently, the Board has no difficulty in concluding that the Applicants have not suffered an erosion of bargaining rights, the protection of such erosion which is contemplated by Section 7(3).

It is understandable that the applicants viewed Prebilt's work on the Sherwood Civic Centre with apprehension and suspicion; indeed, that project would appear to be the catalyst for this application. Evidence shows that the project approaches or has reached the feasibility limits of wood-frame construction that is normally done by the non-unionized sector. Projects of similar size have normally been of steel and of mortar construction and would then be in the area where unionized firms are involved. In fact, one unionized company, Fitzgerald & Snow, did bid the job; however, that firm was the highest bidder and the bid results clearly show that the non-unionized firms who work in wood-frame construction were the only firms with a realistic opportunity to be the successful bidder. Here, again, there is the inescapable conclusion that the Applicants' members did not lose work which they would have expected to obtain if it were not for the presence of Prebilt.

Counsel for Prebilt has alleged that a one-employer declaration would present great difficulties in managing its labour relations, which would then involve both of the Applicants' unions, as well as the Prebilt Employees' Association. While this may be true, the Board wishes to make clear that should evidence point to the intrusion of Prebilt into work normally done by the Applicants, such potential difficulties would be insufficient to deter the Board from making a one-employer declaration.

9. For the reasons above, the Board will not issue an order declaring Prebilt Structures Ltd. and Williams, Murphy & MacLeod(1971) as constituting one employer for the purposes of the Act.

This decision was made by the Labour Relations Board on September 1, 1988, issued under the hand of its Chief Executive Officer.

  
WAYNE S. MacKINNON  
CHIEF EXECUTIVE OFFICER

J.J. Revell, Chairman  
M. Lynn Murray, Vice Chairman  
Elizabeth MacFadyen, Member