



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

ORDER

RE: APPLICATION FOR RECONSIDERATION OF BOARD DECISION
DATED SEPTEMBER 1, 1988

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

COUNSEL FOR THE RESPONDENT (PREBILT STRUCTURES):
WILLIAMS, MURPHY & MACLEOD (1971) LTD.

PREBILT EMPLOYEES' ASSOCIATION

KAREN CAMPBELL

DAVID H. JENKINS, Q.C.

Not Represented

Not Represented

1. On September 1, 1988, the Labour Relations Board issued a Decision on a request made by the Applicants for a declaration of one-employer status pursuant to Section 7(3) of the Labour Act, R.S.P.E.I. 1974, Cap. L-1. The Board at that time refused to issue an order declaring Prebilt Structures Ltd. and Williams, Murphy & MacLeod (1971) Ltd. as constituting one employer for the purposes of the Act.

2. By letter of September 29, 1988, addressed to the then Chief Executive Officer of the Board, Counsel representing the Applicants requested that "the Labour Relations Board appoint a new panel of the Board to reconsider the above noted decision, pursuant to Section 4(1) of the Labour Act." It is further requested at Page 4 of the letter referred to aforesaid:

"The Applicants further submit that the Board's reconsideration of this matter ought to be conducted by a new panel of the Board. The reasons for this request are two-fold. Firstly, Chairperson Revell is on a year's sabbatical from the Board, and is out of Province. As a practical matter this precludes the original panel of the Board from hearing the Applicants' oral submissions on the issues raised in this request for reconsideration. Secondly, in order to give a fair and proper consideration to the challenges made to the Board's decision, and in particular to the challenge of the Board's exercise of discretion and jurisdiction to make the order it did, a new panel ought to be struck as soon as possible.

"The Applicants hereby request that a new panel of the Board is struck as soon as possible to hear the submissions of the Applicants on the issue raised in this request for reconsideration by the Board. The Applicants further request the opportunity to adduce evidence on the issue of what types of construction projects fall within the commercial and industrial sector - if the Board on reconsideration intends to deal with this issue. The Applicants state that they did not specifically address this issue in evidence before the original panel of the Board, since, in their view, it was not a question which they had asked the Board to determine."

The Chairman of the panel that rendered the decision in this matter on September 1, 1988 is residing out of the Province and was not due to return for some time. In light thereof, there were only two members of the original panel available to deal with this matter.

The Board was unaware of any authority that would permit a new panel to reconsider a decision made by a previous panel. To permit a new panel to reconsider a decision made by a previous panel would, in fact, be a new hearing and could not have been the intent of the legislature when it enacted subsection 4(1) of the Labour Act, supra.

Subsection 3(7) of the Labour Act, supra states:

"A majority of the members of the Board or panel constitute a quorum."

Subsection 3(8) of the Labour Act, supra states:

"A decision of the majority of the members of the Board or a panel present and constituting a quorum is the decision of the Board and if the votes are equal, the Chairman shall have the casting vote."

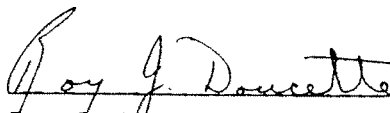
In light of the aforementioned provisions, the remaining members of the Board determined they could sit to determine whether or not the decision should be reconsidered, and to deal with the reconsideration if it became necessary to do so.

The Board convened a hearing on February 16, 1989 to deal with this matter. Counsel for the applicants argued that the Board should reconsider its decision in that it should have exercised its discretion to declare Prebilt Structures Ltd. and Williams, Murphy & MacLeod (1971) Ltd. a common employer. While undoubtedly the applicants wished the Board to exercise its discretion to declare Prebilt Structures Ltd. and Williams, Murphy & MacLeod (1971) Ltd. a common employer, the Board is of the opinion that subsection 7(3) of the Labour Act, supra bestows discretion on the Board to make certain declarations. In its decision of September 1, 1988, the Board chose not to exercise its discretion after hearing the evidence and argument.

The Board has not heard that the applicants intend to adduce any evidence that was not available at the date of the original hearing. In addition, the arguments made by the applicants were addressed in the previous hearing. After hearing the submissions of the applicants and the respondent on the issue of reconsideration, the remaining members of the Board are satisfied that this is not a situation where it should reconsider its original decision. The Board emphasizes that there must be finality to its decisions.

For the foregoing reasons, the remaining members of the Board are unanimous in their decision to decline to reconsider its decision of September 1, 1988 involving these parties.

THIS DECISION made by the Labour Relations Board and issued under the hand of its Chief Executive Officer this 22nd day of March, A.D. 1989.


Roy J. Doucette
Chief Executive Officer

PANEL:

M. Lynn Murray - Chairman
(Vice-Chairman at date of original decision)
Elizabeth MacFadyen - Member
J.J. Revell - Absent