



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

D E C I S I O N

RE:

APPLICATION FOR CERTIFICATION

BETWEEN:

UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA
LOCAL 1338 APPLICANT

AND:

D & E AGENCIES LIMITED RESPONDENT

The Applicant has brought this Application pursuant to Section 53 of the Labour Act. The Applicant also requested expediate disposition of this matter. The Board met and considered this Application as filed.

Section 53 of the Labour Act provides that Applications filed under this section can be considered without the need of a hearing.

The Board is of the opinion that when a union makes an application under Section 53, that is to be considered "ex parte", the Board must take extra care to ensure that the Application is proper and complies fully with the Labour Act. The effect of a Certification Order has important implications on an employer; thus, the Board must be fully satisfied the Application is appropriate before such an Order should be granted without a hearing where an employer may make representations.

With the above in mind, the Board directed its attention to the Application as filed. The Board considered sections 2 and 3 of the Labour Act Regulations. The Board finds the Application is defective on three grounds; they are:

- (1) The Board notes the Application for Certification was signed by Mr. Lou Bradley, who is the Business Representative and Financial Secretary of the Applicant local union. His is the only signature on the Application. Section 2(2)(d) of the Regulations states:

"by a trade union or employers' organization, by the president and secretary or by any two officers thereof, or by any person authorized for such purpose by resolution duly passed at a meeting of the trade union or employers' organization."

The Board notes the Application is not signed by


- (a) the President and Secretary of the union; nor
- (b) any two officers of the union.

Also, there is no evidence to indicate that Mr. Bradley is a person authorized by the union (by way of duly passed resolution) to execute such documents. In the absence of such evidence, the Board has no evidence before it to conclude that the Application is duly made pursuant to the Regulations.

- (2) The Applicant, pursuant to Regulation 3 (2)(c), has filed, concurrently with the Application, a copy of the "Constitution and Laws of the United Brotherhood of Carpenters and Joiners of America". There is no evidence before the Board to indicate that this Constitution is "the" Constitution of the Applicant. If the Applicant has adopted this Constitution by a resolution, a copy of the resolution should have been made available to the Board. If the Charter of the Applicant incorporates the Constitution into effect vis-a-vis the Applicant, a copy of the local's charter should have been filed with the Board. In the absence of any evidence relating the filed Constitution to the Applicant, the Board has no evidence that Section 2 (2)(c) of the Regulations has been satisfied.
- (3) The Board also notes that there is no evidence before it indicating that the Applicant is a trade union as defined in the Labour Act. This is a fundamental point that must be proved. A union, like a corporation, is a creature of its Charter, as all of its powers are derived from this document. Therefore the Board feels that the Applicant's Charter should have been filed for the Board's use. In the absence of evidence going to the Applicant's status as an entity or a trade union, the Board feels the Applicant has not proven its case.

The Applicant must recognize that the onus is on the union to prove all requisite elements of the Labour Act have been complied with in an Application for Certification. For the reasons as outlined previously, the Board finds that the Applicant has not proven all required elements with the Application as filed; thus the Board rules it cannot grant the Certification Order as requested.

THIS DECISION made by the Labour Relations Board and issued under the hand of its Chief Executive Officer, on April 12 AD 1989.



Roy J. Doucette
Chief Executive Officer

PANEL:

Aidan Sheridan, Vice-Chairman
Gerry Doyle
Ray McBride