



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

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Chief Executive Officer

DEPARTMENT OF LABOUR  
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D E C I S I O N

RE: REQUEST FOR MOTION OF NON-SUIT  
BETWEEN: CANADIAN PAPERWORKERS UNION LOCAL 167 APPLICANT  
AND: SCHURMAN INDUSTRIES RESPONDENT  
AND: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA LOCAL 1338 INTERVENOR

COUNSEL FOR THE APPLICANT - PAUL J.D. MULLIN, Q.C.  
COUNSEL FOR THE RESPONDENT - UNREPRESENTED  
COUNSEL FOR THE INTERVENOR - DAVID W. HOOLEY, KAREN CAMPBELL

Counsel for United Brotherhood of Carpenters and Joiners of America (hereinafter referred to as UBC) has made a motion for non-suit based upon the contention that the Applicant, Canadian Paperworkers Union Local 167 (hereinafter referred to as CPU) has not proven all essential elements of its case. Of course there are three elements of a Certification Application upon which the Labour Relations Board must be satisfied before a Certification Order can be granted. The Board must be satisfied that:

- (1) the Applicant is a trade union as is defined in Section 7 (1) (m) of the Labour Act;
- (2) the unit claimed is appropriate for collective bargaining purposes; and
- (3) a majority of all eligible employees within the appropriate unit wish the applicant to be certified as the unit's bargaining agent.

The Board is cognizant of the fact that in a non-suit motion; if the Board finds there is sufficient evidence which, if believed, could lead to a certification order being granted; the motion must fail. The Board has addressed its attention to this motion and finds that this non-suit motion must fail.

Counsel for UBC firstly claimed that the Applicant did not establish its status as a trade union. As both parties know, trade union is defined in Section 7 (1) (m) of the Labour Act. In order to prove trade union status, the union must meet the definition within the Act. In this case, the Applicant has done so. Minutes of the meeting have been filed with this Board which established that on February 15, 1989 an organization of employees was formed "for purposes that include the regulation of relations and collective bargaining between employees and employers" as is contemplated by the Act. At this first meeting, the employees adopted a constitution, authorized

individuals to sign members and others to execute documents in regard to the Prince Edward Island Labour Act, elected officers and made a resolution to apply to Canadian Paperworkers Union for a local union status. The labour text by Sack and Mitchell, at P. 130, lists five steps that the Ontario Labour Relations Board feels should be taken to form a bona fide trade union -- all of which were done at the February 15, 1989 meeting.

The trade union in this case was granted a charter on February 16, 1989 from the Canadian Paperworkers Union granting to it local union status as CPU Local 167. Counsel for UBC has challenged that the Charter was not properly admitted into evidence; thus a fatal flaw appeared in the Applicant's case. However, the Board notes the Charter was tendered and viva voce evidence adduced pertaining to it; thus the Board is satisfied that a charter was granted to the trade union in this matter. Furthermore, it should be pointed out that the Board is not bound by the strict rules of evidence followed in courts due to the combination of Subsections 3 (10) and (11) of the Labour Act. Also it should be noted that the Board recognizes that a valid trade union as defined in the Labour Act can theoretically exist without a charter being granted or a charter in existence. An example would be an employees' association without any affiliation to a national union. However, the Board feels that in situations where a charter does exist, some evidence of this charter should be adduced by the Applicant so as to fully inform the Board.

The trade union in this matter subsequent to the granting of its charter and the organizational meeting of February 15, 1989, signed employees as members and filed such membership with this Board. Counsel for the UBC suggested that the Applicant Trade Union's failure to strictly follow its constitution on certain matters affected its trade union status. Once again the Board refers to Sack & Mitchell on Page 132, where it is noted that Ontario Labour Relations Board has found that failure to hold meetings in accordance with the trade union constitution or failure for officers to take pledges of office does not deprive a body of trade union status.


Counsel for UBC also suggests that the alleged failure to comply with employee notice provisions in the constitution regarding the April 26, 1989 meeting where two new officers were reported to be elected now dictates that the elections were not proper; thus, the list of officers filed in support of the Application is incorrect, or in the UBC opinion, fraudulent. The Board has heard no evidence to show whether or not the proper notice was given to employees regarding this meeting; however, even in the event that proper notice was not given, the Board does not feel that this is fatal to the Applicant's case. No evidence has been presented to challenge the bona fides of the Applicant in the election of these officers or the filing of the list of officers, even if the notice provisions were not followed. Thus the Board feels that Section 47 of the Act and Section 27 of the Regulations dictate that this Application cannot be deemed invalid.

Thus the Board feels, at this stage, that the Applicant has shown its trade union status to the Board's satisfaction.

Secondly, the UBC suggests insufficient evidence has been presented to the Board regarding the appropriateness of the bargaining unit. The Board notes that very little evidence was called in regard to this point; however, evidence was called indicating that the unit claimed in the Application was previously the subject of a Certification Order granted by this Board in favour of UBC. Furthermore the Board is aware that a previous collective agreement was entered into in regard to these employees and that a second has been negotiated and ratified by the unit. The Labour Act states that in a Certification Application scenario, the Board shall determine whether the unit is appropriate, and; in so determining, the Board shall take whatever steps it feels necessary to satisfy itself on this point. The Board, in recognizing the previous certification of the employees, the previous collective agreement and the newly negotiated collective agreement, feels satisfied at this stage that the unit claimed in the current application for certification is appropriate for collective bargaining; thus the non-suit motion must fail on this point.

Lastly, the counsel for UBC challenges the majority aspect of the Applicant's case. The Applicant has filed concurrently with its Application a series of membership cards in Local 167 CPU. The Board finds that these cards meet the requirements of subsection 3 (4) of the Regulations as there is evidence of payment of union dues or fees and also, at the very least, documentary evidence of the employees' wishes to have the Applicant Trade Union certified as bargaining agent on the employees' behalf. The Board also notes that a majority of the employees within the unit have signed such cards; therefore, at this stage the Board is satisfied regarding the majority aspect of the Application.

THIS DECISION made by the Prince Edward Island Labour Relations Board on June 14, 1989 and issued under the hand of its Chief Executive Officer.

  
Roy J. Doyette  
Chief Executive Officer

PANEL:

Aidan Sheridan, Vice-Chairman  
Ted Crockett, Member