



**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

**RE: Review of Certification Order Issued April
23, 1990 - Section 54 of the Labour Act**

BETWEEN:

CONSTRUCTION AND GENERAL LABOURERS UNION LOCAL 1079A

APPLICANT

AND:

CONSTRUCTION & ENGINEERING SERVICES LTD.

RESPONDENT

BACKGROUND:

1. On April 19, 1990 the Applicant applied to the Labour Relations Board (hereinafter referred to as the "Board") pursuant to Section 53 (now Section 54) of the Labour Act to be certified as the bargaining agent for a group of employees employed by the Respondent.
2. Together with Form 1, the Applicant filed a list of its duly elected officers; a list of employees who wished to be represented by the Applicant; a constitution of the Labourers' International Union of North America International Union, Local Unions, District Council; evidence indicating the employees in question were members of the Applicant's union and had paid at least \$2.00 as union dues within three months preceeding the date of the application; a letter to the Labour Relations Board signed by the business representative of the Labourers' International Union of North America which indicated that the labourers represented a majority of labourers with the employer; and a certified copy of the Charter of the Construction and General Labourers and General Workers in construction, industrial and commercial, Local Union No. 1079A.
3. On April 23, 1990 a panel of the Labour Relations Board comprised of M. Lynn Murray, as Chair; Ted Crockett, as employee representative; and James E. McTague as employer representative; met and considered the application for certification. After considering the matter the Board stated in its decision rendered April 23, 1990

"AND WHEREAS, following investigation and consideration of the Application for Certification pursuant to Section 53 of the Labour Act, the Board has found the Applicant to be a trade union within the meaning of the Prince Edward Island Labour Act and has determined the unit described hereunder to be appropriate for collective bargaining and has satisfied itself that a majority of employees wished the Applicant trade union to be certified as bargaining agent on their behalf.

NOW, THEREFORE, it is hereby ordered by the Prince Edward Island Labour Relations Board that the Construction and General Labourers Union be, and it is hereby certified to be the bargaining agent of a unit of employees of Construction and Engineering Services Ltd. comprising all employees employed by Construction and Engineering Services Ltd. working as labourers in the Province of Prince Edward Island, but excluding foremen and those above the rank of foreman."

4. On April 23, 1990, the Chief Executive Officer of the Labour Relations Board sent notice to the Applicant and Respondent of the Certification Order that had been granted.

5. The Respondent has an opportunity pursuant to Section 54(6) of the Labour Act to request the Board to reconsider its decision. Section 54(6) of the Labour Act states:

"The employer named in an order issued under subsection (2) may within ten days of the date of issue apply to the board for a review of the order, but the application shall not alter the rights or obligations of the parties arising from the order."

By correspondence addressed to the Board dated April 26, 1990 and received by the Board on April 27, 1990, the Respondent requested the Board review the Certification Order issued. In light of the request of the employer, the Board convened a hearing to be held May 23, 1990 and gave notice to the Applicant and Respondent.

6. On May 23, 1990, a panel of the Board comprised of M. Lynn Murray as Chair, James E. McTague as employer representative and Judy Goodwin as employee representative, convened to deal with the matter. Although it is the Board's practice to have the same members review the matter, this was not possible as one of the original members had resigned. Thus, a new employee representative was appointed by the Chair to sit on this Panel.

7. At the hearing on May 23, 1990, the position of the Respondent is basically that it specializes in project management and only acts as a general contractor in very few cases. Further, the Respondent tendered a letter from his Company dated September 21, 1989 to Mr. Doug Ross of Ross, Hooley. The correspondence dated September 21, 1989 to Mr. Ross basically outlined the terms of which the Respondent offered its services as construction or project manager. The relevant portion of that letter is reproduced below and it states:

"We would be responsible for the building permit, liability insurance, builders risk insurance, bonding of contractors, office and material storage, sanitary facilities, site clean up, ordering and receipt of material, temporary electrical and water distribution, etc. We would prepare tender packages, call

tenders and prepare contracts for signing, do the layout, maintain vertical and horizontal control. We usually provide a field office, site clerk, and the required administrative, supervisory and inspection staff. If requested by you we would also pay for material, labour and contractors and bill you at our cost. (ie no mark up)."

8. The Respondent also tendered an affidavit of N. Douglas Ross (although Mr. Ross was not made available for cross-examination) wherein Mr. Ross indicates that Richard D. Farmer, President of the Respondent was hired as project manager on behalf of Mr. Ross, David Hooley, Eugene Murphy, John Douglas, Maureen Gregory, Wendy Reid and Ronald Profit, to oversee the renovating of a warehouse situate at 20 Great George Street for their law practice, which Affidavit of N. Douglas Ross is reproduced below in its entirety:

A F F I D A V I T

I, N. DOUGLAS ROSS, of the City of Charlottetown, Queens County, Province of Prince Edward Island, Barrister-at-Law, HEREBY MAKE OATH AND SAY AS FOLLOWS:-

1. That Richard D. Farmer, President of Construction and Engineering Services Ltd. was hired as a project manager on behalf of myself, David Hooley, Eugene Murphy, John Douglas, Maureen Gregory, Wendy Reid, and Ronald Profit, to oversee the renovating of a warehouse situate at 20 Great George Street in the City of Charlottetown, for our law practice.
2. That he is paid an hourly rate for services rendered.
3. That he is not a general contractor in this instance.
4. That he was instructed by us to hire union labourers and union carpenters.
5. That we subcontracted electrical work and the plumbing work ourselves to the appropriate trades who are on site.
6. That all suppliers were contracted by us with the assistance and guidance of Richard D. Farmer as to prices, etc.
7. That most of the contractors are paid directly by me on behalf of my partners.
8. That in some instances the contractors are paid by Construction and Engineering Services Ltd. as they cannot wait until I have a partners' meeting to approve the bill and the amounts are very small.
9. That I am led to believe that there are only two employees of the Company, being the President, Richard D. Farmer, and a secretary.
10. That in most instances of which I have been made aware, Richard D. Farmer and his Company act as project managers and not as general contractors, but in some small contracts they are hired as a general contractor.

SWORN to before me at Charlottetown)
 in Queens County, in the Province)
 of Prince Edward Island, this 23rd)
 day of May, A. D., 1990.)

(Sgd. Deborah L. Pursey)) (Sgd. N. Douglas Ross)
 A COMMISSIONER FOR TAKING
 AFFIDAVITS IN THE SUPREME COURT"

9. Mr. Rose who appeared on behalf of the Applicant indicated that the application was proper and the Board was correct in granting the Certification Order on April 23, 1990.

10. As mentioned previously, the application was made pursuant to Section 54 of the Labour Act. Subsection 54(2) of the Labour Act states as follows:

"If the board is satisfied that the unit applied for is appropriate for collective bargaining and that a majority of the employees in the unit wish the applicant trade union to be certified as bargaining agent for such employees, the board shall forthwith and without holding a hearing, issue a certification order, that, except as provided in this section, shall have the same effect as an order under section 13."

The Board, when it issued the Order on April 23, 1990 was satisfied that the provisions of the Labour Act and specifically Section 54(2) had been adhered to.


11. The Board has conducted a review of the application issued as serial number 07-90 in Board Application No. 90-007. The Board is satisfied that the Applicant is a trade union, that the unit applied for is appropriate for collective bargaining, and that a majority of the employees in the unit wished the Applicant to be certified as bargaining agents for those employees.

12. While in this particular case, the employees did not specifically request that the Respondent be certified, by virtue of subsection 3(4) of the Labour Act Regulations, a person is deemed by the Board to wish the applicant trade union to be certified as bargaining agent if at the date of application he was a member in good standing of the applicant trade union and had paid at least \$2.00 in union dues within three months preceeding the date on which the application was filed. The Board is satisfied that the employees were members of the Applicant at the date of Application and that the employees had paid the required amount in dues within three months preceeding.

13. On a final note, while the Board understands the position that the Respondent may find itself in, pursuant to the legislation in place, the Applicant has satisfied the prerequisites necessary to have the Certification Order issue.

14. Having stated the foregoing, the Board is of the unanimous opinion that its decision issued April 19, 1990 was correct and pursuant to subsection 54(7) of the Labour Act, the Order issued April 23, 1990 is hereby confirmed.

This decision of the Labour Relations Board was made this 19 day of February, A. D. 1991 and issued under the hand of its Chief Executive Officer.



ROY J. DOUCETTE
CHIEF EXECUTIVE OFFICER

PANEL:

M. Lynn Murray, Chair
Judy Goodwin
James E. McTague