



**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

**DECISION**

**RE: APPLICATION FOR RECONSIDERATION OF A CERTIFICATION ORDER**

**BETWEEN:**

**MacIntyre Sheet Metal Ltd.**

**APPLICANT**

**AND:**

**United Association of Journeymen and Apprentices of  
The Plumbing and Pipefitting Industry of the  
United States and Canada Local 721**

**RESPONDENT**

**Counsel for the Applicant**

**J. Gordon MacKay**

**Counsel for the Respondent**

**Eugene P. Rossiter, Q.C.**

**Background:**

1. On March 27, 1992 the Respondent, United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada Local 721 (hereinafter referred to as the Union) applied to the Labour Relations Board (hereinafter referred to as the Board) pursuant to Section 54 of the Labour Act, R.S.P.E.I. 1988, Cap. L-1 (hereinafter referred to as the Labour Act) for certification of all employees of MacIntyre Sheet Metal Ltd. (hereinafter referred to as the Company) working as journeymen plumbers, pipefitters, welders, apprentices and labourers in the province of Prince Edward Island excluding foremen and those above the rank of foreman.

## Certification Order

2. On March 31, 1992 a panel of the Board comprised of Vice-Chairman Aidan Sheridan, Ted Crockett as employee representative and James McTague as employer representative met to consider the application. After reviewing the matter, the Board caused a Certification Order to be issued under the hand of its Chief Executive Officer on March 31, 1992 which stated in part:

*AND WHEREAS, following investigation and consideration of the Application for Certification pursuant to Section 54 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 United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada be, and it is hereby certified to be the bargaining agent of all employees of the Respondent working in the fabrication, installation and/or maintenance of plumbing and pipefitting installations, of every description and character, in the Province of Prince Edward Island excluding foremen and those above the rank of foreman.*

3. A copy of the above noted order was forwarded to the Company at its address in Charlottetown, P.E.I. on March 31, 1992. The Company was advised by correspondence that pursuant to Section 54(6) of the Labour Act an employer named in an Order may apply for a review of the Order within ten(10) days of the date of the issue of the Order.

## Request for Review

4. On April 9, 1992 correspondence was received from J. Gordon MacKay, Counsel for the Company which reads in part as follows:

*As you know, we represent MacIntyre Sheet Metal Limited with respect to the captioned and we do hereby confirm our request for a review of the Certification Order issued by the Labour Relations Board on March 31st, 1992, which request for a review was made to you on Friday, April 3rd, 1992, pursuant to Section 54(6) of the Labour Act, R.S.P.E.I. 1988, Cap. L-1.*

*The matters in issue on the review will be set out under separate cover.*

Yours very truly,

CARR, STEVENSON & MacKAY

J. Gordon MacKay

JGM/sp

5. On April 23, 1992 an Application for Review was received from J. Gordon MacKay which was dated April 21, 1992 and executed by Frank MacIntyre, President, MacIntyre Sheet Metal Limited. It set out the grounds for review.

6. On May 6, 1992 a hearing to consider the Application for Review was convened. At the hearing, Counsel for the Union by way of preliminary objection contended the Board did not have jurisdiction to proceed for the following reasons:

- (a) Section 54(6) requires that an employer named in a certification under Section 54(2) may only apply for a review of the Certification Order within 10 days of the date of issue and that such application must be in the manner as prescribed by Section 2 of the Regulations.
- (b) Council argued that since the letter from Mr. MacKay of April 9 was not filed by way of Statutory Declaration as required by Section 2 of the Regulations, it could not constitute an Application and the Board therefore did not have jurisdiction to proceed with the review.
- (c) Council argued further that since the 10 day time period required by Section 54(6) was a statutory mandate, the Board did not have the power to amend that time period.
- (d) Council argued that the statutory declaration of Mr. MacIntyre referred to above and dated April 21st was beyond the 10 day period and could not be considered by the Board as meeting the requirements of Section 2 of the Regulations.

7. On May 14, 1992 the Board rendered a decision which reads in part as follows:

Upon due consideration, the Board finds that Section 54(6) is specific in that the request for review from the Employer must be by way of Application and that such Application must be in the manner as prescribed by Section 2 of the Regulations. The Board also finds that it does not have authority to amend the 10 day time period as stipulated in Section 54(6). Consequently the Board does not have the authority to consider the Statutory Declaration of Mr. MacIntyre dated the 21st day of April to be an Application which would satisfy the requirements of Section 54(6).

## Application for Reconsideration

8. On May 15, 1992 an Application for Reconsideration was received from Counsel for the Company which was dated May 15, 1992 and executed by Frank MacIntyre, President, MacIntyre Sheet Metal Limited.
9. On May 29, 1992 a hearing was convened and Counsel for the parties presented argument to the panel as to whether or not the Board had jurisdiction to reconsider the matter under Section 4(1) of the Labour Act when there was a specific procedure under Section 54(6) of the Labour Act which had not been complied with by the Employer.
10. On June 5, 1992 the Board rendered a decision on this matter which reads in part as follows:

*The Board is of the unanimous view that a reconsideration hearing should take place since the Board may have contributed to or caused the Employer to be denied the right to be heard and because the above information, if true, may have some bearing on whether Certification Order No. 06-92 should stand. The Board therefore will reconsider on its own motion the decision of the Board to grant Certification Order bearing No. 06-92 dated March 31, 1992.*

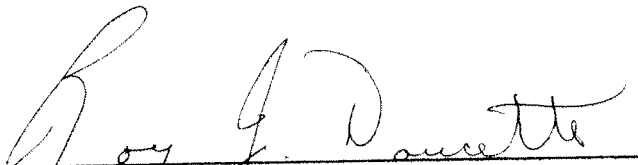
11. On June 15, July 1 and 2, 1992 the Board held hearings on this matter and on July 28, 1992 the Board met to review the submissions and render a decision.

## Decision

12. The Board has given careful consideration to the evidence and argument advanced at the above hearings which included evidence in relation to the make-up of the appropriate bargaining unit, the employees that properly fall within the bargaining unit and whether a majority of employees in the unit wish the Union to be certified.
13. Based on this consideration and review, the Board is of the unanimous opinion that the decision of the previous panel was proper and correct and that the order issued by that panel should not be varied or revoked.

Thus Board Order 06-92 dated March 31st, 1992 remains in effect.

This Decision made by the Labour Relations Board this 28th day of July, 1992 and issued under the hand of its Chief Executive Officer.



Roy J. Doucette  
Chief Executive Officer

**PANEL:**

J.J. Revell, Vice-Chair  
Ted Crockett, Member  
Gerald Doyle, Member