



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

Michele D. Sanderson, B.A., LL.B.
Chair

Roy J. Doucette
Chief Executive Officer

DEPARTMENT OF LABOUR
P.O. BOX 2000
CHARLOTTETOWN
PRINCE EDWARD ISLAND
C1A 7N8

IN THE MATTER OF REQUEST FOR RECONSIDERATION

BETWEEN:

**INTERNATIONAL UNION OF BRICKLAYERS AND
ALLIED CRAFTSMAN, LOCAL 1, P.E.I.**

APPLICANT

AND:

C.P. MASONRY LTD.

RESPONDENTS

DECISION

On the 18th day of November 1994 the International Union of Bricklayers and Allied Craftsmen, Local 1, P.E.I. filed an application for certification pursuant to section 54 of the Labour Act, R.S.P.E.I. 1988, Cap L-1. The application sought certification for all employees of C.P. Masonry Ltd., employed as journeymen and apprentice masons, bricklayers and cement finishers, excluding foreman.

Upon review of the application and evidence filed, the Labour Relations Board issued a certification order on the above-noted terms on December 2, 1994. On that same date the order was sent to the employer with notice of subsection 54(6) of the Act which 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."

On December 22, 1994, the Board received an Application for Review of Certification Pursuant to Section 6(4) of the Labour Act from C.P. Masonry. By subsequent correspondence from the Applicant, the matter has been reframed to be a Request for Reconsideration pursuant to section 4(1) of the Act which states in part:

"the board may at any time, if it considers it advisable to do so, reconsider any decision, interim order, order, direction, declaration or ruling made by it and vary or revoke any such decision, order, direction, declaration or ruling."

The Board's position with respect to reconsideration has generally been that a party seeking reconsideration must show that there is information and evidence available that was not presented to the Board at the time the application was made. The Applicant herein declares that the Board made its decision without hearing from the employees. The Applicant filed with the Board undated and unsworn statements from three employees, Bruce MacLeod, Edward Doyle and Chester Noye, indicating that they are not seeking certification of the company. The question then arises, what effect, if any, do these statements have on the original membership evidence presented to the Board in the application for certification.

The Board requested that the parties provide written briefs to address paragraph 3(4)(a) of the Regulations which states:

"A person shall be deemed by the Board to wish that the Applicant trade union be certified as bargaining agent on his behalf if at the date of application

(a) he was a member in good standing of the applicant trade union, and, had paid at least two dollars as union dues within three months preceding the date on which the application was filed.

Written submissions were received by the Board on February 24, 1995. The Applicant argues that the "documents" executed by Chester Noye, Edward Doyle and Bruce MacLeod are sufficient evidence to persuade the Board that the true wishes of the employees oppose certification.

The Labour Act and Regulations are based on the premise that employees have a right to collectively bargain. This is the fundamental underpinning of the legislation. Employees can be vulnerable in the certification process and therefore, the Act has built in safeguards which are designed to protect employees from being pressured from either side. The deeming provision in paragraph (a) of subsection 3(4) of the regulations is an example of those safeguards. The Respondent relies on a passage from George W. Adams, Q.C., text Canadian Labour Law (1985) Canada Law Book Inc., at page 355:

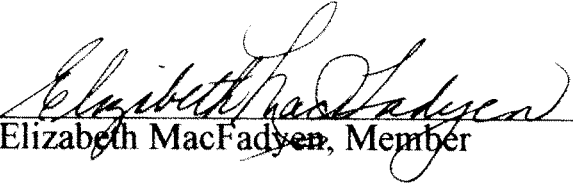
"The basic way in which membership is proved is by filing with a Board documentary evidence of the unequivocal signing of a membership card or application, and the paying of initiation fees or dues... As stated previously membership evidence serves as the Labour Board's gauge as employees support for the Trade Union..... Thus a petition in which the employees purport to revoke their membership to the Trade Union does not in fact cancel the membership evidence."

In this reconsideration, the Board must determine whether the "documents" filed by Noye, Edwards, and Doyle provide a clear, unequivocal and voluntary expression of their true wishes at the time the Application was made. The Board has determined that they do not. The membership evidence filed with the original application remains untainted by the subsequent filing of these documents. The trade union, as outlined in International Union of Operating Engineers vs Pitts Pacific Construction (1979) 2 Can LRB 577, is entitled to rely on the act of an employee in joining a trade union to represent the employee for the purposes of a certification application. The Board remains convinced of the efficacy of this premise and is not persuaded that the documents subsequently filed are sufficient to obviate the membership evidence before the Board. While this position may appear harsh, the Board believes that in the interests of harmonious industrial relations, prior and continued membership in a trade union is a clear indication of the desire to bargain collectively and be represented. Also, it must be remembered that the Act clearly provides for a revocation procedure, should the evidence warrant.

The Board hereby dismisses the request for reconsideration and affirms the Certification Order number 11-94.



Michele D. Sanderson
Chair

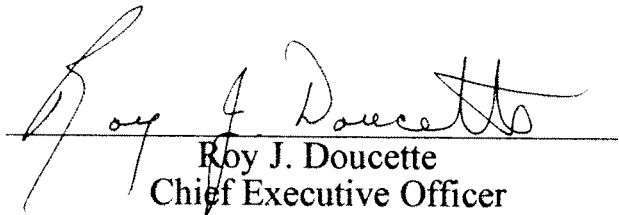


Elizabeth MacFadyen, Member



Lloyd Weeks, Member

THIS DECISION made by the Labour Relations Board on this 3rd day of March, 1995 and issued under the hand of its Chief Executive Officer.



Roy J. Doucette
Chief Executive Officer