



File No. 95-060

Decision No.

**IN THE MATTER OF THE APPLICATION FOR REVIEW**

**BETWEEN:**

**INTERNATIONAL ASSOCIATION OF HEAT AND FROST  
INSULATORS AND ASBESTOS WORKERS, LOCAL 131  
APPLICANT**

**AND:**

**GUILDFORD LTD.  
RESPONDENT**

**Counsel for the Applicant:  
Counsel for the Respondent:**

**Paul Mullin  
Eugene Rossiter**

**D E C I S I O N**

**BACKGROUND**

An Application for Certification was received on October 17, 1995, from the International Association of Heat and Frost Insulators and Asbestos Workers, Local 131, to be certified as a Trade Union representing all employees of the Respondent applying insulation material and protective finish in the Province of Prince Edward island, save and except supervisors of the staff and all others excluded by the Labour Act.

The Application, as received, did not indicate whether the Application was filed under Section 54 of the Act. The Board upon review of the Application satisfied itself that it was the intention of the Applicant to make the Application under Section 54 and granted a Certification Order.

In accordance with Subsection 54(6) of the P.E.I. Labour Act, the Respondent made application for a review of the Certification Order.

The Respondent states that the Application for Certification was not properly made under Part II of the Labour Act, R.S.P.E.I. 1988 Cap. L1, in that the Application fails or omits to state in paragraph six (6) whether it was filed under Section 54 of the Act; and, therefore, the Certification Order dated October 31, 1995, serial no. 90-95 should be rescinded by the Board under Section 54(7) of the Act.

Counsel for the Respondent argued that the Application must be complete in all respects and in every detail in order for the Board to have initial jurisdiction to entertain the Application pursuant to the Act. Counsel argued that the fact that question six(6) was not answered was sufficient to keep the Board from having initial jurisdiction over the Application. It was further argued, because of the lack of initial jurisdiction, the Board could not use any of the curative provisions of the Act.

Counsel referred the Board to the Prince Edward Island Supreme Court Decision of Mr. Justice C.R. McQuaid, April 12, 1989, between Marriott Corp. vs. Labour Relations Board (P.E.I.) as reported in 73 Newfoundland and P.E.I.R., page 173, and in particular paragraphs 9 and 10 on page 174,

*“What this hearing brought clearly and most emphatically, to the fore was the heavy onus that lies upon the Board from the very outset of a proposed Application coming before it, the duty of the Board to be fully cognizant of its duty and in this regard and of the vigilance required of it in order to acquire initial jurisdiction to undertake a hearing on the merits.*


*Section 2 and 3 in particular of the regulations appear mandatory. As they relate to applications for certification, they are required to be complied with in every detail. Unless they are so complied with, the documents deposited with the board do not constitute an application within the meaning of the Act, and, consequently, the Board would have no jurisdiction to enter upon a hearing.”*

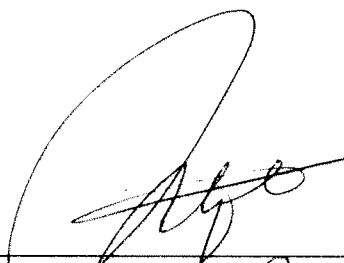
The foregoing principal has been reinforced and followed by the Labour Relations Board of the Province of P.E.I. in subsequent Applications.

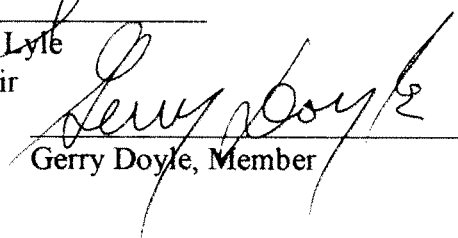
The Board is therefore of the opinion that it did not have initial jurisdiction to entertain the Application due to the Application not being complete in its totality. Based upon the above, the Order for Certification is, therefore, rescinded.

Counsel for the Respondent also submitted that the Application should fail because the proper statute was not cited in their resolution which conferred signing authority to the Business Manager, the proper parties had not signed the Application and the word “organization” rather than Trade Union should have been used in their resolution.


The Board is of the opinion that it cannot comment on these issues as it did not have initial jurisdiction.

  
\_\_\_\_\_  
Ted Crockett, Member

  
\_\_\_\_\_  
George Lyle  
Chair

  
\_\_\_\_\_  
Gerry Doyle, Member

**THIS DECISION** made by the Labour Relations Board on the 23rd day of January 1996 and issued under the hand of its Chief Executive Officer on this 7th day of March, 1996.

  
\_\_\_\_\_  
Roy J. Doucette  
Chief Executive Officer