



File No. 96-004

Decision No.

IN THE MATTER OF THE APPLICATION FOR CERTIFICATION/UNFAIR LABOUR PRACTICE COMPLAINT

BETWEEN:

**CONSTRUCTION AND GENERAL LABOURERS UNION, LOCAL 1077
APPLICANT**

AND:

**PADINOX INC. COB PADERNO CANADA
RESPONDENT**

AND:

**SOME EMPLOYEES OF PADINOX
INTERVENORS**

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

**Gordon MacKay
Eugene Rossiter
David Sanderson**

DECISION

BACKGROUND

The Application by Construction and General Labourers' Union, Local No. 1077, was received on February 15, 1995, to be certified as a Trade Union representing all employees of Padinox Inc., carrying on business as "Paderno Canada", working as labourers, machine operators, wash line operators, hand sander operators, welder operators, grinding operators, buffer operators, working supervisors, maintenance personnel and warehouse persons, but excluding non-working foremen and those above the rank of non-working foremen. The Application received had attached to it a certified true copy of the minute of the Construction and General Labourers' Union, Local No. 1077, along with a letter stating that the resolution was passed on July 28, 1992. The resolution stated: "Be it resolved that the business manager, John P. Rose, or his successor, shall have the authority to sign all legal documents pertaining to matters placed before the Labour Relations Board of Prince Edward Island, on behalf of the Construction and General Labourers' Union, Local No. 1077".

In addition, attached to the Application was a true copy of a Charter granted by the Labourers' International Union of North America providing for the establishment of a local Union of the Labourers' International Union of North America to be known as the "Construction and General Labourers' and General Workers' in Construction, Industrial and Commercial, Local Union No. 1077", dated the 28th of July, 1994. Concurrently filed with the Application for Certification was the Constitution of the Labourers' International Union of North America along with the uniform local Union Constitution and uniform District Council Constitution.

On February 15, 1995, pursuant to the regulations of the P.E.I. Labour Act, Section 41, the Chief Executive Officer fixed the terminal date for the Application as March 8, 1996, and served the Notice of the Application on the Respondent in the format of Form 3 and copies of the Notice to the employees in the format of Form 4 for posting in an appropriate location.

A Notice of Intervention was filed on March 8, 1996, on behalf of certain employees of Padinox Inc., carrying on business as "Paderno Canada", listing those employees opposed to the Application.

The Employer Respondent, as well, replied to the Application on March 8, 1996, and in its reply claimed that the Labour Board was without jurisdiction to proceed with the Application since,

- A. The Applicant did not, in accordance with Section 3(2)(c) of the Regulations, under the Labour Act, file concurrently with the Application a copy of its Constitution, Rules and By-Laws, or other instrument and documents and, in particular, a copy of the charter as a local Union of the Labourers' International Union of North American and in particular, a copy of its Charter issues pursuant to Article XVII of the Constitution of the Labourers' International Union of North America;
- B. The Applicant did not, as required by Section 2(2)(d) of the Regulations under the Labour Act, file any Resolution duly passed at a meeting of the Applicant authorizing John P. Rose and Sandy Clark to make and file the subject Application with the Board.

The Respondent requested, and reserved the right, to attend and make full presentation and argument at any hearing of the Board in respect of the subject Application.

Pursuant to the intervention filed by the employees and the response by the employer, a hearing was scheduled on this matter.

Counsel for the Respondent argued that the Application must be completed in all respects and in every detail in order for the Board to have initial jurisdiction to entertain the Application pursuant to the Act. Further, Counsel argued that the Application must be prepared and signed pursuant to Section 2(2)(d) of the Labour Act Regulations, and that all the required supplementary documentation as set out in Section 3(2)(a) (b) (c) & (d), of the Labour Act Regulations must be filed concurrently with the Application.

Pursuant to Regulation 2(2)(d), the Application must be signed by the President and Secretary of the Trade Union, or by any two officers thereof, or by any person authorized for such a purpose by a Resolution duly passed at a meeting of the Trade Union or employer organization. Council for the Respondent in support of his argument made reference to the Prince Edward Island Supreme Court decision of Mr. Justice McQuaid in the Marriott Corp. v. Labour Relations Board (P.E.I.), reported in (1989) 73 Nfld. and P.E.I., R173 and, in particular, paragraph 11 on page 174 of that decision where Mr. Justice McQuaid stated:

".....also that those persons signing the proposed application do, in fact, hold the offices which they purport to hold and are acting within their constitutional authority."

In order for the Board to determine if the persons signing the Application are doing so within their constitutional authority, reference must be made to the constitution of the Union which is required to be filed concurrently with the Application pursuant to the Labour Act Regulations 3(2)(c). Pursuant to Mr. Justice McQuaid's comments, the Board concludes that those persons signing the Application must draw their authority directly from the constitution of the Union. If the persons signing the Application are two officers other than the President and the Secretary, then the Board is of the opinion that the Constitution of the Trade Union must provide for their authority or if the person signing the Application is some one other than the President and Secretary, or any two officers thereof, then the Constitution must give to the Union the constitutional authority to delegate the signing authority to another person; otherwise, the other person is acting ultravires of the Constitution of the Union.

Furthermore, in order for the Union to be established as a Trade Union, and to be identified as such, the Regulations required the Applicant to file concurrently with the Application, pursuant to Regulation 3(2), such material upon which it relies upon to establish it as a Trade Union. That document would normally be the Charter granted to the local Union by some body of legal authority.

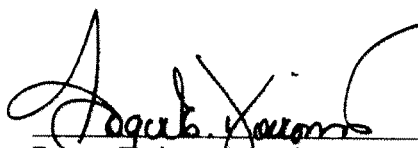
In the present situation, the Charter that was filed with the Application identified the local Union to be "Construction and General Labourers' and General Workers' in Construction, Industrial and Commercial, Local Union No. 1077". It further stated that this Charter was issued in accordance with, and subject to, the International Union Constitution, and the local Union shall be bound by, and comply with, all of the provisions of the International Union Constitution, the uniform local Union Constitution, and the uniform District Council Constitution, and shall conduct its affairs in accordance with the provisions thereof.

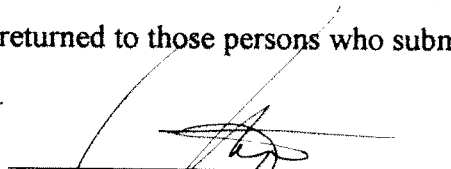
On the Application, the Applicant was identified as Construction and General Labourers' Union, Local No. 1077, not the body identified in the Charter filed. The Board was unable to determine that Trade Union as set out in the Charter was the Applicant.

Furthermore, the Charter filed was dated the 28th of July, 1994, but the Resolution that was filed authorizing the business manager, John P. Rose, and his successor, to have the authority to sign all legal documents was shown to be moved and seconded at a regular monthly meeting of the Construction and General Labourers' Union held on Tuesday, July 28, 1992. Therefore, the Board determined that the Resolution filed was not made pursuant to the Constitution of the chartered body identified in the Charter filed, the Resolution having been prepared and passed two years prior to the issuance of the Charter.

DECISION

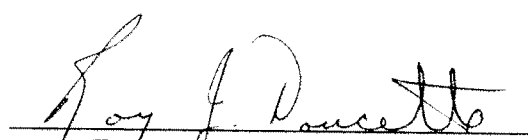
The Board has unanimously concluded that the Application by the Construction and General Labourers' Union, Local No. 1077, for certification as a bargaining agent is not complete, the Applicant not having filed concurrently with the Application a copy of its Constitution, Rules and By-laws upon which the Board must rely upon in order to determine whether, in fact, the Applicant is a Trade Union and that the persons signing the Application are those that have the constitutional authority to do so. Furthermore, the Board concludes that because the Application is not complete, the Board is without jurisdiction to hear the Application. The Board, therefore, orders that the Application be returned to those persons who submitted the Application along with all supporting documents.


Roger Doiron, Member


George Lyle
Chair


Ray McBride, Member

THIS DECISION made by the Labour Relations Board on the 26th day of April, 1996 and issued under the hand of its Chief Executive Officer on this 9th day of May, 1996.


Roy J. Doucette
Chief Executive Officer