



File No. 96-005

Decision No.

IN THE MATTER OF THE APPLICATION FOR CERTIFICATION

BETWEEN:

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

APPLICANT

AND:

GUILDFORD LIMITED

RESPONDENT

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

**Paul Mullin
Eugene Rossiter
Gordon MacKay**

DECISION

BACKGROUND

An Application for Certification was received on February 16, 1996 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 and materials 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 was filed under Section 54 of the Act. The Board, upon review of the Application, satisfied itself that all the requirements of the Prince Edward Island Labour Act and Regulations have been met.

During the review of the Application process, the Board noted that there was an existing Collective Agreement in force between the Labourers Union and the Construction Association of Prince Edward Island, binding the Respondent by way of a Collective Agreement dated the 1st of April, 1993. The Board invited the Applicant and the Labourers Union to present written and oral argument on whether a Collective Agreement is in place which occupies the jurisdictional field sought by the Insulators' Union. A hearing was held on the 29th day of April, 1996, to hear oral argument by the Applicant, the Respondent and the Labourers Union.

The Labourers Union put forward, as part of its argument, the fact that there was a Collective Agreement entered into on May 24, 1978, and by way of a Memorandum of Agreement dated the 13th day of July, 1979, the Respondent, Guildford Limited, entered into a voluntary recognition of that Collective Agreement. The voluntary recognition also referred to any other Agreement that may be negotiated on a future date between the Construction Association of Prince Edward Island and the Union. The Board further takes notice of the Labourers argument, that an Agreement dated the 1st of April, 1993, was made with the Respondent as a party which was set up for a period of one year and renewable each year thereafter. The Respondent, Guildford, advised the Board that the Labourers Union has provided the Construction Association of Prince Edward Island with notice of its desire to bargain with a view to renewal of the Collective Agreement. The Respondent argues that the Notice of the Labourers Union desire to bargain closes any window or open period as contemplated by Section 12(6) of the Act.

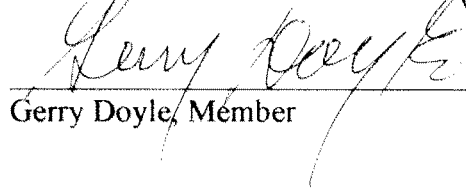
DECISION

After review of the 1978 Collective Agreement, the Memorandum of 1979, and the new Collective Agreement of 1993, the Board is of the opinion that neither of these Collective Agreements set out the jurisdictional area of the Labourers Union. The Board recognizes the fact that the Collective Agreements address a rate of pay for asbestos abatement. The Board is therefore of the opinion that the jurisdictional area of the Labourers Union is limited to asbestos abatement. The Board has concluded that the Application by the International Association of Heat and Frost Insulators and Asbestos Workers, Local 131, is timely, and not in conflict with the Collective Agreement dated the 1st day of April, 1993, between the Construction Association of Prince Edward Island and the Construction and General Labourers Union for all work in the jurisdictional field of installing insulation in new construction, or insulation in prior constructed sites which does not involve asbestos abatement.

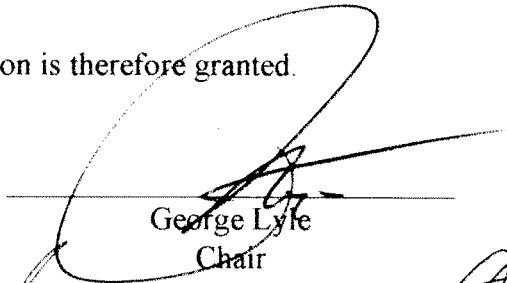
The Board, after review of the Collective Agreement, and hearing evidence of past practices, is of the opinion that should the Labourers Union claim the trade jurisdiction which is claimed by the International Association of Heat and Frost Insulators and Asbestos Workers, Local 131, that this claim, pursuant to Article 16 of the 1st of April, 1993, Collective Agreement, should be made by a separate Application under Section 38 of the Labour Act.

The Board is guided by the Ontario Board decision in Stacey Electric Company Limited, [1987] O.L.R.B. Rep. 428 at 433, which states the Ontario Labour Board's practice, "is, in fact, to generally avoid making any determination as to whether certain work should be performed by one trade classification or another when dealing with a certification application."

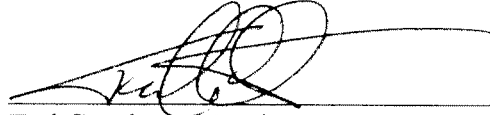
The Application for Certification is therefore granted.



Gerry Doyle, Member

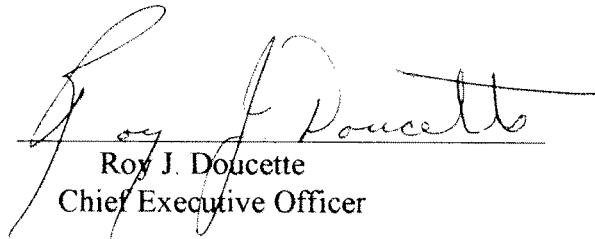


George Lyle
Chair



Ted Crockett, Member

THIS DECISION made by the Labour Relations Board on the 24th day of June, 1996 and issued under the hand of its Chief Executive Officer on this 11th day of October, 1996.



Roy J. Doucette
Chief Executive Officer