



IN THE MATTER OF THE APPLICATION FOR REVIEW

BETWEEN:

DONALCO ATLANTIC LTD.

APPLICANT

AND:

**CONSTRUCTION AND GENERAL LABOURERS' AND
GENERAL WORKERS' IN CONSTRUCTION, INDUSTRIAL AND
COMMERCIAL, LOCAL UNION NO. 1077**

RESPONDENT

AND:

**INTERNATIONAL BROTHERHOOD OF PAINTERS AND
ALLIED TRADES, LOCAL 1945**

INTERVENOR

**Council for Applicant:
Council for Respondent:
Council for Intervenor:**

**David Hooley
J. Gordon MacKay
Paul J.D. Mullin**

DECISION

BACKGROUND

The Labour Relations Board received an Application on the 22nd of July, 1996, from the Construction and General Labourers' and General Workers' in Construction, Industrial and Commercial, Local Union No. 1077, (hereinafter referred to as Labourers' Union) to be certified as the bargaining agent for Donalco Atlantic Ltd. The Application was filed under Section 54 of the Labour Act. The Labourers' Union claimed the appropriate unit for collective bargaining to be all those employees of the Respondent working as labourers and asbestos abatement removers and the re-installation of insulation in the Province of Prince Edward Island, but excluding foremen and those above the rank of foremen.

The Labourers' Union, on their Application in response to question 7 and 8, answered as follows:

Question 7 - Name of any trade union or employees organization known to the Applicant as claiming to be the bargaining agent of, or as claiming to represent, any employees affected by this Application. _____ N.A.

*Question 8 - Is there a collective agreement affecting employees in the proposed unit? If so, state commencement date: _____ N.A.
expiry date: _____ N.A.*

A Statutory Declaration was given by Sandy Clark as part of the Application for Certification which states as follows:

*I/WE _____ Sandy Clark
declare that the statements made and information given herein are true in substance and in fact, and that I/WE make this solemn declaration conscientiously believing it to be true, and knowing that it is of the same force and effect as if made under oath and by virtue of the Canada Evidence Act.*

The Labour Relations Board, following an investigation by the Chief Executive Officer considered the Application for Certification. Pursuant to Section 54 of the Act, the Board found that the Applicant to be a trade union within the meaning of the Prince Edward Island Labour Act, determined that the unit described thereunder to be appropriate for collective bargaining and satisfied itself, from documents filed, that a majority of the employees wished the Labourers' Union to be certified as the bargaining agent on their behalf. It was, therefore, ordered by the Prince Edward Island Labour Relations Board that the Labourers' Union, be certified as the bargaining agent for all employees of the Respondent working as labourers, asbestos abatement removers and the reinstallation of insulation in the Province of Prince Edward Island, but excluding forepersons and those above the rank of foreperson. The Order was issued on the 24th of July, 1996.

Pursuant to the Prince Edward Island Labour Act, Notice of this Order was forwarded to Donalco Atlantic Ltd.

On or about the 31st of July, 1996, the Applicant, Donalco Atlantic Ltd., applied for the review of the Order, pursuant to the Labour Act, Section 54(6). The Applicant's Application for Review under Section 54(6) of the Labour Act was heard by the Board on January 14, 1997, and continued on April 15, 1997.

A preliminary objection was brought by the Labourers' Union challenging the Board's jurisdiction to hear the Application for Review. It was suggested by the Labourers' Union that the Application for Review was not in the prescribed form #5 under the Labour Act and Regulations and was, therefore, a nullity in keeping with the decision of Justice C.R. McQuaid of the Supreme Court of Prince Edward Island in the Marriot Foods Judicial Review case. The Board held that the proposition of the Marriot case did not apply and that the Employer and International Brotherhood of Painters and Allied Trades, Local 1945, (hereinafter referred to as the Painters' Union) had standing to appear and to make representation to the Board. Further, the Board was of the opinion that form #5 was not the prescribed form to initiate this review.

The Board determined that it had jurisdiction to hear the Application, that it had a continuing jurisdiction to conduct a review under Section 54(6), as well as Section 4(1) of the Labour Act. The power of the Board to reconsider any of its Orders is very broad and non-restrictive. The Labour Act and the Regulations make it very clear that the Board may review any of its Decisions which have been made in ignorance of any material fact or an Application which contained an error of fact or an important issue of Board policy may be raised or where an Order may have been obtained by deceit or where any of the parties seeking a review or reconsideration were entitled to receive Notice of the Application but had not been so notified.

The Board, during the hearing, heard evidence to suggest that the Board should also consider trade jurisdiction. The Board is of the opinion that matters of trade jurisdiction should be brought to the Board by separate Application under Section 38 of the Labour Act. It is not appropriate for matters of trade jurisdiction to be raised during the certification process.

ISSUE

The Board is of the opinion that the sole issue before it is whether or not the Board ought to revoke the Certification Order dated the 24th of July 1996.

EVIDENCE

It was submitted by the Applicant that the Order granted to the Respondent was made in ignorance of a material fact. It was also suggested that the Board was misled as a result of the manner in which Questions 7 and 8 of the Application were answered.

The evidence given by Mr. David Williamson on behalf of the Applicant indicated that the Applicant has been organized throughout Canada in every Province by the Painters' Union and that he was shocked to discover that through an oversight, the collective agreements in force between Donalco Atlantic Ltd., and the Painters' Union, was not on file with the Labour Relations Board. Mr. Williamson's evidence was quite clear that Donalco had performed numerous jobs on Prince Edward Island using the Painters' Union actively from 1992 up to the Board Certification of the Labourers' Union on July 24, 1996. It was suggested by the Applicant's Counsel that the Painters' Union have operated in the Province of Prince Edward Island as a unionized employer as if a formal Voluntary Recognition Agreement existed under Section 19(2) of the Labour Act. It was further submitted that at the time of the granting of the Certification Order to the Labourers' Union, the Labour Relations Board was not aware of the claims of the Painters' Union, since the Application failed to disclose it.

The Board wishes to observe that even if the collective agreement had been filed with the Board, that in itself is not sufficient to the Board to recognize the Painters' Union under the Act without the employer having filed either before or concurrently with the filing of the collective agreement a Voluntary Recognition Agreement.

Mr. Williamson, in his evidence, provided to the Board (Exhibits 5 and 6) an exchange of correspondence between the Labourers' Union's Solicitor and Donalco in January and February of 1993, both of which were copied to John Rose, the business agent of the Labourers' Union. The letters set out the nature of the relationship between the Painters' Union and Donalco. Exhibit 5 was a letter from J. Gordon MacKay to Donalco Inc., to the attention of Mr. Williamson. In that letter, Mr. MacKay suggested that he represented the Labourers' Union. In that letter, Mr. MacKay indicated that it was brought to his attention that a contract had been

filed with the Labour Relations Board of the Province of Prince Edward Island for the purpose of the Painters' Union being recognized as a bargaining agent for the employees of Donalco working in the Province of Prince Edward Island in asbestos abatement jobs. That letter was acknowledged by Exhibit 6 where Mr. Williamson responded by saying that Donalco Inc., had been unionized for some time now through the asbestos removal division of the Painters' Union and had been working off and on Prince Edward Island for the past five years. He further indicated that they had a valid agreement through their local representative and indicated that he would not be able to join the Labourers' Union even if they had wished to do so.

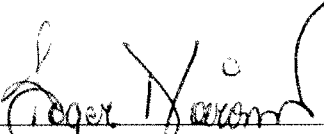
Mr. MacKay's letter seemed to indicate that the Labourers' Union was aware that the Painters' Union filed, at some time in the past, a contract with the Labour Relations Board. There was no evidence as to what happened to Mr. Williamson's reply to Mr. MacKay.

The evidence of Mr. Sandy Clark in response to the employers Application indicated that he did a physical search of the records of the Labour Relations office to determine whether in fact a collective agreement had been filed by the Painters' Union or by any other union organizing the employees of Donalco. His evidence indicated that he could not find any such contract. However, Mr. Clark, in his evidence, indicated that he was aware that the Painters' Union was involved in some capacity. There was further evidence presented to the Board that at the time of Mr. Clark's organizing drive, he was made aware that a trade certificate card, issued by the Painters' Union, indicated that a safety awareness program had been taken by certain employees through the Painters' Union.

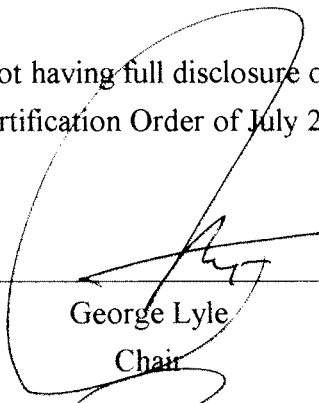
DECISION

The Board is of the opinion that Mr. Clark, in his declaration on the Application for Certification, failed to advise the Board of all material facts, in particular, that a trade union or an employee organization was claiming to be the bargaining agent of any employees affected by his Application by answering the question with the expression N.A. The Board is of the opinion that Mr. Clark was fully aware of the existence of the Painters' Union and its assumption that it was the bargaining agent for the Donalco employees in Prince Edward Island at the time of his declaration.


Pursuant thereto, the Board not having full disclosure or full facts in front of it at the time of the Application, orders that the Certification Order of July 24, 1996, serial number 08-96, be withdrawn and rescinded.



Roger Doiron, Member

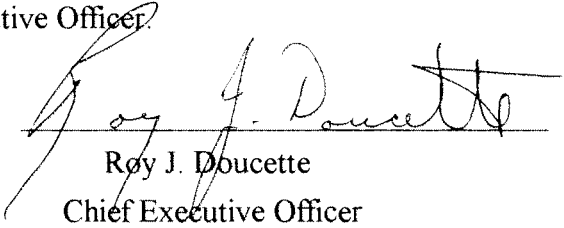


George Lyle
Chair



Ray McBride, Member

THIS DECISION made by the Labour Relations Board on this 11th day of July, 1997 and issued under the hand of its Chief Executive Officer.



Roy J. Doucette
Chief Executive Officer