



File No. 97-039

Decision No.

**IN THE MATTER OF AN APPLICATION FOR REVIEW PURSUANT TO SECTION 54(6) OF THE PRINCE EDWARD ISLAND LABOUR ACT, R.S.P.E.I. 1988, CAP. L-1**

**BETWEEN:**

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

**APPLICANT**

**AND:**

**HIGHFIELD CONSTRUCTION COMPANY LIMITED**

**RESPONDENT**

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

**J. Gordon MacKay, Q.C.  
John K. Mitchell, Q.C.**

### **BACKGROUND**

On July 24, 1997, the Board received an Application for Certification from the Construction and General Labourers' Union and General Workers' in Construction, Industrial and Commercial, Local Union No. 1077 (the "Union"), to certify all employees of Highfield Construction Company Limited (the "Company") working as rebar installers in the province of Prince Edward Island, but excluding foremen and those above the rank of foremen, pursuant to Section 54 of the Labour Act.

The Board consisting of the panel Janice MacCallum, Chair, Judy Goodwin and Keith Warren, met to consider the Application on Monday, July 28, 1997. The Board found all matters pertaining to the Application to be in order under the Labour Act. Accordingly certification was granted by Order of the Board dated July 29, 1997 and pursuant to the Act, notice was sent to the Company.

On August 8, 1997, the Board received a request supported by the affidavit of Joseph Cameron, the owner of the Company, to review the foregoing Order of Certification pursuant to Section 54(6) of the Labour Act. The Board consented to the request for a review and issued a Notice of Hearing of the Application for Review of the Certification Order to take place on October 2, 1997, commencing at 9:30 a.m.

## **ISSUES**

The Company opposes the Certification Order as it believes a majority of the employees in the unit described do not support the Order and also that the unit applied for is not an appropriate bargaining unit as there is no sufficiently coherent community of interest such that they can bargain together on a viable basis without, at the same time, causing serious labour relations problems for the employer. The Employer contends that given the nature of the work performed, the proper community of interest would encompass all of the employees of the Company who are classified as labourers, carpenters and machine operators. The Company also submits, by affidavit evidence of Joseph Cameron, that the Union is not an appropriate agent to represent rebar installers in Prince Edward Island as rebar installation is an extremely small part of the Union's jurisdiction and also of the work performed by the Company.

## **DECISION**

At the outset, the Board states that it is clear that the Union would indeed be an appropriate agent to represent rebar installers in the province of Prince Edward Island. Aside from Mr. Cameron's affidavit, the Company provided the Board with no further evidence on this point to support this submission.

The central issue, therefore, before the Board is whether or not the majority of the employees in the bargaining unit support the certification of the Union as their bargaining agent. In order to determine this, the Board needs to first determine the actual number of rebar installers in the employ of the Company on the date of the application, July 24, 1997, for the purpose of determining majority support, as well as any increase in this number after the application date. In this respect, the definition of rebar installation must also be ascertained.

The Board concludes from the evidence presented by all witnesses, the task of rebar installation is essentially defined as involving the steps of "placing, spacing and tying" of rebar. From the evidence, it became quite clear to the Board that there are a large number of employees who are involved in one or more of the steps of rebar installation on the various jobs performed by the Company. Further, it became clear, particularly from the evidence of Mr. Cameron, that rebar installation comprises only a small percentage (10-15%) of the local work performed by the Company, and in fact is sometimes work that is subcontracted out to a third party or a subsidiary company. As well, for each particular job, rebar installation represents only a small percentage of the total man hours required by the Company, and thus by inference, represents only a small part of the total duties required of most employees involved in such.

It is the evidence of Mr. Cameron that his Company employs at least fifteen people, excluding foremen or above foremen, whom the Company can call upon at any time to do rebar installation. Virtually all employees are hired by the Company to perform a variety of tasks, including rebar installation. The Company performs rebar installation in a number of its jobs, which are at different locations throughout the province of Prince Edward Island at various times.

Particularly with respect to the Hillsborough Bridge project, the evidence of Harold MacLeod was to the effect that only he and employee Roger Bain performed rebar installation on that project, although they also performed other duties. It was the evidence of Mr. Cameron, that Mr. MacLeod certainly had experience with rebar installation, however he was hired to perform this as well as other tasks as required. In fact, Mr. Cameron states that Mr. MacLeod was hired when an employee who primarily did mason work left the Company.

The evidence of foreman Jan Van Ewyk is also contrary to that of Mr. MacLeod. Mr. Van Ewyk was the foreman on the Hillsborough Bridge job and he advised that those employees involved in rebar installation included Mr. MacLeod and Roger Bain but also three additional employees.

The Board notes that pursuant to Section 13(6), the Board may also consider any increase in the number of employees in the bargaining unit after the application date. While the Hillsborough Bridge project was under way, there was also rebar installation work being performed by other employees of the Company at the Clyde River project (see Tab 42 of Applicant's Exhibits). In addition, the Overhead Sign Base of ICS project was being done between July 9 and July 29, 1997. There were four individuals identified as doing rebar installation on this job.

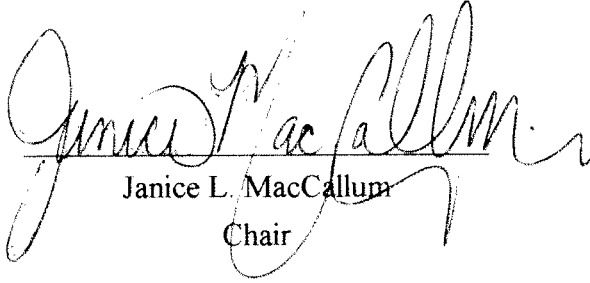
The Board therefore concludes that based on the totality of the evidence, the majority of the employees in the unit do not support the Certification Order.

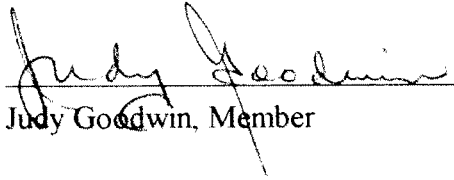
In addition, the Board notes that, although a weakness of community of interest may not in itself be fatal to the Union's application, there appears to be a myriad of problems which would arise from the stated unit, not the least of which is the fragmentation of the work unit. Since a number of employees are involved in rebar installation, and these employees perform a number of tasks other than rebar installation, certification would indeed effectively make these full time employees, part time employees.

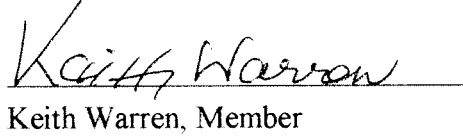
It is also noted that in its post-hearing submission to the Board, the Union states that it would not be opposed to the Board placing limitations on the application of the Certification Order to rebar installation jobs involving significant amounts of rebar work. The Board rejects this submission as being unworkable.

Although it is the date of the application that is relevant, and although it was not sworn testimony in any way, the Board does wish to note the attendance at the hearing of a large number of the employees of the Company who at the end of the hearing stood in support of the employee Brent Gallant to indicate their support for the Company's position on this application and that the majority of them were quite satisfied with the status quo and did not wish the Union to represent them as a unit.

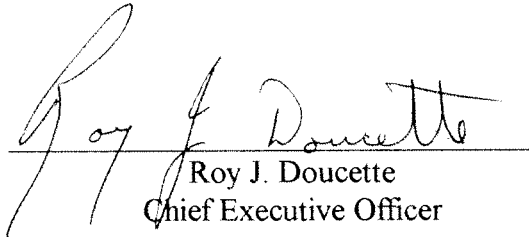
In light of the foregoing, the Board, pursuant to Section 54(7) of the Labour Act unanimously agreed to rescind Certification Order 11-97. Accordingly, the Board orders that Certification Order 11-97 dated July 29, 1997 between Construction and General Labourers' and General Workers' in Construction, Industrial and Commercial, Local Union No. 1077 and Highfield Construction Company Limited, be and is hereby ordered to be rescinded.

  
Janice L. MacCallum  
Chair

  
Judy Goodwin, Member

  
Keith Warren, Member

**THIS DECISION** made by the Labour Relations Board on this 19th day of December, 1997, and issued under the hand of its Chief Executive Officer.

  
Roy J. Doucette  
Chief Executive Officer