



File No. 98-009

Decision No.

IN THE MATTER OF AN APPLICATION FOR CERTIFICATION

BETWEEN:

**NATIONAL AUTOMOBILE, AEROSPACE, TRANSPORTATION AND
GENERAL WORKERS UNION OF CANADA (CAW-CANADA)**

APPLICANT

AND

ALLIED SIGNAL AEROSPACE CANADA

RESPONDENT

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

**Gordon Forsyth
Eugene P. Rossiter**

BACKGROUND

The Form 1 Application for Certification of the Applicant was received by the Board on June 12, 1998. Owing to a delivery problem, using Priority Post, the Forms 3 and 4 were not received by the Respondent Employer. Hence, the terminal date, at the request of the Employer, was extended to July 15, 1998. Form 5, Reply/Intervention to Application for Certification, was filed by the Respondent on July 15, 1998. (Pursuant to correspondence from Eugene P. Rossiter, Solicitor for the Respondent dated June 30, 1998.)

A further letter from Eugene P. Rossiter, dated July 27, 1998, advised of the termination of 13 employees by Allied Signal at its Slemon Park operation, Slemon Park, Prince County, Prince Edward Island.

In a letter from Pink, Green, Larkin, signed by Kimberly H.W. Turner, the Applicant purported to address a number of jurisdictional issues raised in the Reply filed by the Respondent. This letter concluded by stating that the jurisdictional issues raised by the Employer are not matters which require evidence before the Labour Relations Board. It was requested that the Board make a determination on the jurisdictional issues in advance of the October 15 and 16 Hearing dates.

The Board next received correspondence from the Counsel for the Respondent to the effect that the jurisdictional matters raised could not be dealt with by written submissions and affidavit evidence but required representations at the Hearing scheduled for October 15 and 16, 1998.

The Board also received two written submissions from Employees of Allied Signal relating to Union Membership.

STATUTES SITED

Affidavits Act RSPEI 1988, Cap.A-7, Section 4

Labour Act RSPEI 1988, Cap.L-1, Section 3, 4, 7, 8, 9, and 12

Interpretation Act RSPEI 1988, Cap. I-8, s. 26(e.2)

REGULATIONS SITED

Labour Act Regulations, Section 2, 3, 4, 7, 10, 22, and 26

AUTHORITIES

Black's Law Dictionary (4th ed.) At p. 1732 and p. 1174

Pietrangelo Masonry, [1981], O.L.R.B. Rep. Feb 218.

Pebra Peterborough Employees Association v. Pebra Petersborough Inc. (1988), 88 C.L.L.C. 16,018

Ontario Labour Relations Board Form A-4.

Re FFAW, [1988] N.J. No. 230 (Nfld. S.C.) p.4.

Costello v. City of Calgary (1983), 143 D.L.R. (3d) 385 (S.C.C.) p.395.

Unilease Inc. v. Lee-Mar Developments Ltd. (1987), 23 CPC(2d) 46 (Ont. S.C.).

Warren Industrial Feldspar Co. Ltd. v. Union Carside Canada Ltd. (1986), 8 CPC 1.

Marriott Corp. v. Labour Relations Board (PEI) (1989), 73 Nfld. & P.E.I.R. 174 (PEISC).

Construction and General Labourers' Union, Local 1077 and Padinox Inc. COB Paderno Canada. LRB File No. 96-004(P.E.I.L.R.B., May 9, 1996).

UBCI, Local 1338 v. D&E Agencies Ltd. (P.E.I.L.R.B., April 12, 1989).

International Association of Heat & Frost Insulators and Asbestos Workers, Local 131 v. Guildford Ltd. (P.E.I.L.R.B., March 7, 1996).

CAW-Canada v. Central Farmers Co-operative Ltd. (P.E.I.L.R.B., March 1, 1989.).

International Union of Operating Engineers, Local 902 v. Schurman Supply (P.E.I.L.R.B., June 24, 1988.).

Bell Co. of Canada (1967), 67 CLLC 16,024 (CLRB)p. 1008.

Regional Municipality of Halton, [1983] O.L.R.B. Rep. Sept. 1462.

Construction and General Labourers Union, Local 1079-A v. Gulf Island Peat Moss Co. Inc., (P.E.I.L.R.B., December 29, 1992).

Waverly Village v. Nova Scotia (1993), 16 CPC (3d) 64 (NSSC) affirmed (1994), 30 CPC (3d) 205 (NSCA) leave to appeal denied 34 CPC (3d) 130.

International Brotherhood of Electrical Workers, Local 1432 v. Gorman Controls Ltd. (P.E.I.L.R.B., December 2, 1988.).

Windor Manufacturing Ltd. v. Carpenters, Local 1928, [1984] BCLRB 292-03.

Haebler Construction Ltd. v. United Brotherhood of Carpenters and Joiners of America, 22 Locals, British Columbia Labour Relations Board, March 4, 1993, page 14303 to and including 14304.

Re Canadian Pacific Air Lines et al and Canadian Air Line Pilots Association et al, Supreme Court of Canada October 21, 1993.

Ontario Labour Relations Board Law and Practice, Sack and Mitchell, 3:7335, Pages 243-245

Caramac Travel Consultants Ltd. V. Nova Scotia Labour Relations Board (1979), 36 N.S.R.(2d) 256, (NSSCTD)

Pashko v. Canadian Acceptance Corporation Ltd. (1957), 12 D.L.R. (2d) 380(BCCA)

Knogo Corp. V. Pearl's Fashions Ltd. [1996] B.C.J. No. 1659(BCSC)

Toronto Newspaper Guild v. Globe Printing Company, [1953] 3 D.L.R. 561 S.C.C.

United Food and Commercial Workers' International Union v. Boland's Limited, PEI Labour Relations Board (April 21, 1992)

Canadian Paper Workers Union, Local 167 v. Schurman Industries v. United Brotherhood of Carpenters and Joiners of America, Local 1338, file Nos: 89-021A and 89-021B, May 16, 1991
Amalgamated Meat Cutters and Butcher Workmen of North America v. E.H. Ferree Company Limited et al, 67 C.L.L.C. 1018, February 13, 1967

Ontario Nurses' Association, et al. V. Grey Owen Sound Joint Homes for the Aged, Ontario Labour Relations Board April 19, 1983

Canadian Paperworkers Local 167 and Schurman Industries, PEI L.R.B. #89-0124

CAW-Canada and Garden Province Meats, PEI L.R.B. October 25, 1998, #87-002

United Food and Commercial Workers Union, Local 864 and Marriott Corporation of Canada Ltd., (2 October 1995) P.E.I.L.R.B. No. 95-047

National Automobile, Aerospace and Agricultural Implement Workers Union of Canada (CAW-Canada) and Advanced Medical Technologies, A Division of Tube-Fab Ltd. (7 December 1990) P.E.I.L.R.B. No. 90-020

United Food and Commercial Workers Local 1252 (In Trusteeship) and Lobster Specialities Limited, (13 July 1990) P.E.I.L.R.B.

The Hearing of this Application for Certification was conducted over three days October 15 and 16 and October 30, 1998.

PRELIMINARY MATTERS

At the outset of the Hearing the Counsel for the Respondent indicated that there were a number of jurisdictional issues to be addressed prior to the Board entering into a Hearing on the matter of the Application for Certification. The Board received submissions from Counsel for the Respondent and rebuttal submissions from the Counsel for the Applicant in regards to these jurisdictional issues.

The Board was then presented with an objection by Counsel for the Applicant to the Board's authority to receive evidence. The Board adjourned to consider the specific issue of whether it was entitled to receive evidence on the preliminary matters. Upon reconvening, the Board made the finding that it had a document before it which purported to be an Application for Certification. The Board ruled that there were no prohibitions in either the statute or jurisprudence to prevent receipt of evidence on the matters before it.

Similarly at the outset of the second day of the Hearing the Board re-stated its ruling that there are documents that purport to satisfy the filing requirements on an Application for Certification. The Board indicated that it understood the law, in statute and in jurisprudence, to call on it to embark upon an inquiry. The Board indicated it had heard evidence on some of the issues and that it would continue to hear the case on its merits and rule on all matters in the written Decision.

EVIDENCE

Documents received by the Board from the Applicant were tendered as Exhibits A1, an excerpt from the Constitution of the National Automobile, Aerospace and Agricultural Component Workers' Union Canada (CAW-CANADA) dated September 1991; as Exhibit A2, an excerpt from the Constitution of the National Automobile, Aerospace, Transportation and General Workers' Union of Canada (CAW), dated August 1994; and as Exhibit A3, a statutory declaration of Frank Joseph Luce of Toronto, Province of Ontario, dated the 19th day of August, 1998.

On behalf of the Respondent, there were 15 documents submitted as Exhibits R1 through R15.

ISSUES

A. Preliminary Issues - Jurisdiction

There were a number of issues raised relating to this Board's jurisdiction to begin to consider the matter of an Application for Certification. The Respondent contended that the Board lacked jurisdiction as the signatories to the Form 1 Application had failed to verify the supplementary documents. Counsel for the Respondent argued that the Applicant indicated on the Form 1 filed is not a trade union in that the name submitted does not coincide with the named entity in the constitution filed.

It was argued that there is no proper statutory declaration before the Board, as it has not been properly sworn in that it did not have the jurat stamped with a notarial seal.

Further, it was submitted the signatories have not been properly authorized in accordance with the constitution as this document requires approval of the President's actions at quarterly meetings of the Union.

It was then submitted that there was no "triggering claim" of representation of the "majority".

It was contended also that the signatories to Form 1 did not verify, and did not review membership evidence and did not make inquiries and therefore could not have personal knowledge of the material filed under Sections 3(2)(a) and (b) of the Regulations..

In regards to the first issue, the Board specifically draws attention to the list of alleged members. It is headed as Exhibit "C" to Form 1 and the initials of the persons making the statutory declaration appear on the upper right hand corner. Similarly the list of officers is titled Exhibit "B". The Board accepts the Applicants submission that the Respondent's authorities deal with other jurisdictions where there are very specific requirements for sworn evidence. If for no other reason, those cases are distinguished on that basis alone. The Board holds that the Decision of Mr. Justice Jenkins in *APM Construction Inc. vs. Construction and General Labourers' Union, Local 1077*, as upheld by the Appeal Division of the Supreme Court, ratifies the past practice of this Board and this Board's interpretation of the legislative requirements. This challenge to the Board's jurisdiction is denied.

Respecting the second issue, again Mr. Justice Jenkins decision dealt with this issue and held that a variance from the name described in the Charter and that set out in the Application was not fatal to this Board exercising its jurisdiction.

On the third issue, the Board finds that the omission on the part of the notary to affix his seal to be, although not trivial, a technical matter. The Board finds that there are ample legislative and case law authorities to support a finding that such a technical irregularity is curable. Given the additional evidence filed by the Applicant at the beginning of the hearing, the Board finds that the failure to affix the seal to Form 1 Application does not deny this Board its jurisdiction over the matter of the Application for Certification. The Board rules to amend the document accordingly.

In regards to the fourth issue, the Board interprets the provisions of Section 2(2)(d) of the Regulations to the Labour Act to be a disjunctive not a conjunctive listing of what individuals may sign Applications on behalf of the trade union. The Board can not find favour with the Respondent's position that the Board lacks jurisdiction because the President and Secretary signing the Application had not been ratified by a quarterly meeting of the Union.

On the fifth issue of there being no triggering claim, the Board finds that, if by no other reason, then certainly by implication, the very filing of the Application on the prescribed form is an assertion of the claim to be representing the majority of the employees.

On the sixth issue, the Board holds that it has indirectly dealt with this contention in its response to the first point raised by the Respondent. The Board reiterates that the attachment of the list of alleged members, and its heading of Exhibit "C" and the fact that it bears the initials of the President's and Secretary is evidence that would satisfy any requirements for verification of membership status.

B. Main Application Issues

There are three issues which must be addressed in an Application for Certification: a) Union status, b) bargaining unit and c) majority representation. In addition to these issues, there was the issue presented by the Respondent as to whether this Board would order a Representation Vote. Also, the Applicant, at the close of the Hearing, raised the issue of its authority to amend its Application, post terminal date. The Board directed Counsel that this latter issue be addressed by written submission. The Respondent also requested a time bar pursuant to Section 13(7) of the Legislation, barring the Applicant for bringing applications for a period of ten years.

CONCLUSION

Upon the evidence filed and arguments advanced, on behalf of the Applicant, National Automobile, Aerospace, Transportation and General Workers Union of Canada (CAW-CANADA), through Legal Counsel, Mr. Gordon Forsyth, this board is satisfied, beyond any doubt, that this Applicant is in fact a bonafide Union which is capable of bringing an Application for Certification under the Prince Edward Island legislation. That is not to say that there has not been some doubt cast upon the propriety of the named of the entity utilized in Applications placed before this Board by this Union.

On the issue of appropriate bargaining unit, the Respondent raised the issue of, the Application for Certification containing no reference to geographic area. It was further contended that this matter goes as well to the issue of whether the Board has a completed Application before it which can be considered.

The position taken by the Applicant Union was to request authority to amend its Application post-terminal date. The parties addressed the issue in written submissions to the Board. The Respondent argued on page 8 of their Supplementary Authorities, to the effect that:

4. Amendment to Certification Application

Section 26 of the Regulations states that an application, reply, intervention, complaint, statement of desire to make representation or notice may be amended before or at the hearing by leave of the Board on such terms and conditions as the Board thinks advisable.

The practice of the Board and the jurisprudence of the Board is that in order for an application, etc. to be amended:

- (a) A request for leave to amend must be presented to the Board, and*
- (b) the request for leave must be accompanied by an amended application form appropriately sworn.*

No such request or leave was presented to the Board accompanied by an appropriately sworn amended application. No consent was provided by the Respondent for the proposed Amendment.

Canadian Paperworkers Local 167 and Schurman Industries, PEI L.R.B. #89-0124 [Tab 6/Blue Binder]

CAW-Canada and Garden Province Meats, PEI L.R.B. October 25, 1998, #87-002 [Tab 7/Blue Binder]

The Applicant submitted, in the letter dated December 21, 1998 and received by the Board on January 4, 1999, that the provisions of Section 3(12) of the Act and Section 27 of the Regulations give the Board the statutory authority to amend the Application. The Applicant cited the cases of *United Food and Commercial Workers Union, Local 864 and Marriott Corporation of Canada Ltd.* (2 October 1995), P.E.I.L.R.B. 95-047 and, *National Automobile, Aerospace and Agricultural Implement Workers Union of Canada (CAW-Canada) and Advance Medical Technologies, A Division of Tube-Fab Ltd.* (7 December 1990) P.E.I.L.R.B. 90-020 and *United Food and Commercial Workers Local 1252 (In Trusteeship) and Lobster Specialities Limited*, (13 July 1990) P.E.I.L.R.B. as authorities for their submissions.

Also going to the issue of the appropriateness of the bargaining unit, the Respondent contended that the unit established for the purpose of collective bargaining, must be comprised of employees of the employer, not "persons". The Respondent submitted that the Applicant had failed to seek Certification of employees. It was submitted that there was no authority of the Board to create a unit for collective bargaining purposes of persons as opposed to employees and that therefore there was not an Application before the Board seeking an Order that is within the Board's authority. The Board does not find that the substitution of the word "persons" for "employees" in the Application for Certification is an error, in and of itself, which would deny the Board jurisdiction to consider the Application before it.

It is on the issue of the legality of the request of the Applicant Union to amend its original Application that this whole matter turns. It is without doubt that the Board has power over its own process and the latitude to make amendments following the due process of the legislation. The Board's ruling with regards to the preliminary matters raised in this Hearing speaks volumes in that regard.

The Board was presented the Application to Amend orally and at the conclusion of the hearing on October 30, 1998. The written submission was received January 4, 1999.

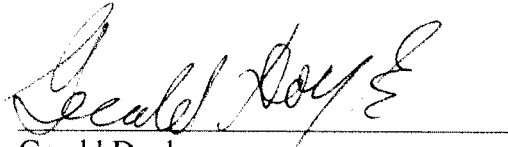
In the circumstances of this case, the Application to Amend the Application for Certification does not meet the statutory requirements. Neither do the authorities relied upon by the Applicant persuade the Board that an amendment can be granted by this Board in this case. To allow this amendment would not be in keeping with the Board's policy of insisting on strict compliance with the legislative and regulatory requirements.

Having so concluded, the Board must then turn its attention to the submission of the Respondent that this Board has before it an Application lacking in the specifically requested and critical evidence as to geographic area as it relates to the jurisdiction of the Board. The Board finds that it must concur with the submissions of the Respondent to the effect that the Board does not have jurisdiction to hear the matter. The Board cannot consider the three main Application issues set out above. The Board does not have before it a properly completed Application and the Board will not go on to consider the issues of Union status, bargaining unit, and majority representation.

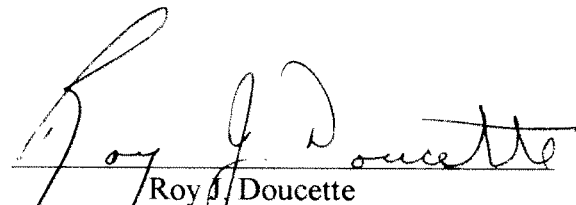
The Board rules to deny the Respondent's request for a time bar of ten years pursuant to Section 13(7). Those provisions are only applicable after the Board has considered and dismissed an Application for Certification. The Board in this case has ruled it does not have an Application which may be considered. If there is no Application, then it is impossible to dismiss it. If there is no dismissal, then there is no basis for the Board to exercise its discretion to designate a length of time that must elapse before the same Applicant may make a new Application.


Robert MacArthur
Chair


Elizabeth MacFadyen
Member


Gerald Doyle
Member

THIS DECISION made by the Labour Relations Board on this 1st day of February, 1999, and issued under the hand of its Chief Executive Officer.


Roy J. Doucette
Chief Executive Officer