



File No. 98-018

Decision No.

**IN THE MATTER OF AN APPLICATION FOR REVIEW OF CERTIFICATION  
ORDER 16-98 PURSUANT TO SECTION 54(6) OF THE PRINCE EDWARD ISLAND  
LABOUR ACT, R.S.P.E.I. 1988, CAP. L-1**

**BETWEEN:**

**FERMOY CONSTRUCTION LTD.**

**APPLICANT**

**AND:**

**UNITED BROTHERHOOD OF CARPENTERS AND  
JOINERS OF AMERICA, LOCAL 1338  
(UNDER SUPERVISION)**

**RESPONDENT**

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

**Mr. Lea Schurman  
Mr. David Roberts**

**DECISION**

**BACKGROUND**

1. On October 14, 1998, the Respondent applied to the Prince Edward Island Labour Relations Board (hereinafter referred to as the "Board") pursuant to Section 54 of the Labour Act to be certified as the bargaining agent for "all carpenters, apprentice carpenters, carpenter helpers, and carpenter working foremen on Prince Edward Island."

2. On October 27, 1998, a panel of the "Board" met and after review of the Application the "Board" found the Applicant to be a trade union within the meaning of the Labour Act, and determined the unit described to be appropriate for collective bargaining and satisfied itself that a majority of employees wished the applicant trade union to be certified as bargaining agent on their behalf.

3. On November 6, 1998, Fermoy Construction Ltd., by way of Statutory Declaration signed by Mr. Lea Schurman, requested a review of Certification Order 16-98, the Statutory Declaration states under paragraph 2 as follows:

2. *THE GROUNDS for the review herein requested for are as follows:*

(a) *That the unit as contained in the Application for Certification received by the Labour Relations Board on October 14th, 1998, is not appropriate for collective bargaining;*

- (b) *That there is no majority support among the employees properly encompassed in the unit who wish the applicant trade union to be certified as bargaining agent of said employees;*
- (c) *That the collective agreement governing relations between the United Brotherhood of Carpenters and Joiners of America, Local 1338 (Under Supervision) and certified employers, does not apply to the Respondent.*
- (d) *That the United Brotherhood of Carpenters and Joiners of America, Local 1338 (Under Supervision), Local 1338 is, as described, under supervision, and is therefore questioned as fitting the definition of trade union under s. 7(1)(m) of the Labour Act.*

4. The "Board" Panel consisting of Greg Howard, Vice-Chair, with members, Ted Crockett and Brendon McGinn, convened the Section 54(6) review on January 5, 1998, at MacLauchlin's Motel. In attendance were Mr. Lee Schurman on behalf of the employer and Mr. David Roberts, Counsel for the Respondent Union. A group of employees of Fermoy Construction Ltd., represented by Ms. Lisa Goulden also attended the hearing.

5. As a preliminary matter, the Panel considered and declined a request to grant formal intervenor status to Ms. Goulden on behalf of certain employees of Fermoy Construction Ltd.

6. The "Board" informed the Applicant that he had the right to call any witness and he could, if he so desired, call the employees who were in attendance.

7. The Applicant submitted the position that it specializes in the building of agricultural buildings and would not be part of the commercial and industrial sector.

8. Upon considering the relevant provisions of Part II of the Act, "Construction Industry Labour Relations", the Board finds that there is no rational basis to distinguish construction work in the agricultural sector from construction work within the industrial and commercial sector.

9. The various sectors are enumerated in Section 52(h) of the Act. The Applicant has not demonstrated any reason why another sector would be more appropriate to its business or why, if there were a more appropriate sector, its employees should not be certified pursuant to Section 54(2) of the Act. The Board finds that the Applicant employer conducts business within the industrial and commercial sector and is bound by the provisions of Part II of the Act.

10. The Applicant's Statutory Declaration also questions whether there is "majority support among the employees properly encompassed in the unit." In argument, the Applicant submitted that casual employees who were employed at the construction site on the date of the Application for Certification should be included in the unit. Three permanent employees of the Applicant testified at the hearing that they were not in favour of the Union.

11. The Board finds that the relevant date to determine majority support is the date of the Application for Certification. The Board is satisfied that on the date of the Application, the Respondent trade union had the support of the majority of the employees. It is not relevant to this review that there were occasional or casual employees of the Applicant who were employed on the worksite at the relevant date.

12. The Applicant submitted in argument that many of its employees were not “carpenters” because they do a variety of jobs at the construction site, including jobs not ordinarily associated with the trade of carpentry. The Applicant’s reasoning appears to be that the Respondent trade union is not entitled to be certified as exclusive bargaining agent of “carpenters and carpenters helpers” of the Applicant, as the individuals employed by it are not carpenters and could not form an appropriate unit.

13. The Board finds that it is not necessary to identify the tasks performed by employees of the Applicant to determine whether they are “carpenters or carpenters helpers” as set out in the Application of Certification.

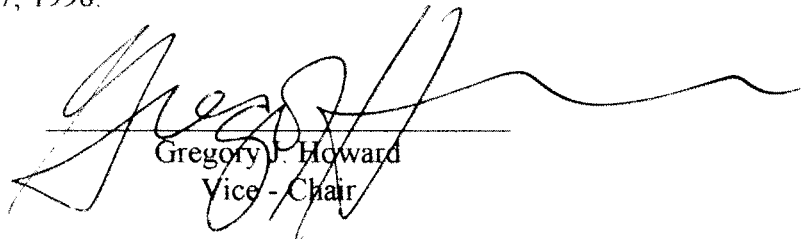
14. The Board is satisfied that the employees in the unit are not excluded pursuant to Section 52(e)(i) or (ii) of the Act and that the Applicant is an employer “who operates a business in the construction industry” as defined in Section 52(f) of the Act.

15. The employees clearly perform tasks generally associated with the trade of carpentry, although they may perform other tasks. The employees of the Applicant are an “appropriate unit” within the meaning of Section 52(b) of the Act.

16. Finally, the Applicant questions whether the Respondent, in its status under supervision, is a trade union under Section 7(1) of the Act. The Applicant did not elaborate on this ground of review in its presentation. The Board finds that the current status of the local is not a factor that limits its function as a trade union, as that term is defined in Section 7(1) and Section 52(i).

17. After hearing the submissions of both parties, the “Board” was of the unanimous opinion that the Certification Order issued on October 27, 1998, satisfied the provisions of the Labour Act and specifically Section 54(2) had been adhered to.

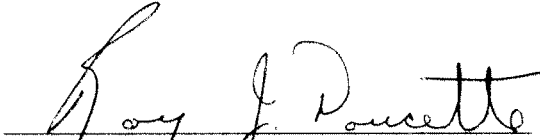
9. Having stated the foregoing, the “Board” pursuant to Section 54(7) hereby confirms the Order issued October 27, 1998.

  
Gregory J. Howard  
Vice - Chair

  
Ted Crockett, Member

  
J. Brendon McGinn, Member

**THIS DECISION** made by the Labour Relations Board on this 10th day of February, 1999, and issued under the hand of its Chief Executive Officer.

  
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Roy J. Doucette  
Chief Executive Officer