



File No.

Decision No.

10-005

IN THE MATTER OF

AN APPLICATION FOR REVOCATION OF CERTIFICATION ORDER 18-97 PURSUANT TO SECTION 20 OF THE *LABOUR ACT* OF PRINCE EDWARD ISLAND, R.S.P.E.I. Cap. L-1

BETWEEN:

EMPLOYEES OF YORKTOWN CONSTRUCTION

APPLICANT

AND:

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

RESPONDENT

REPRESENTATIVES OF THE APPLICANT:

Vernon Docherty and Myron Wilson

REPRESENTATIVES OF THE RESPONDENT:

Farrel Huculak

DECISION

On the 16th day of April, 2010, the Applicants filed with the Labour Relations Board (hereinafter the Board) on requisite Form 7, an Application for Revocation of Certification Order 18-97 which had been issued on the 30th day of September, 1997. Paragraph 4 of the Form 7 states: Does the Respondent union represent a majority of employees in the unit for which it was certified? The answer provided by the Applicants is simply "No".

On the 13th day of May, 2010, the Respondents filed the Reply to the Application for Revocation of the Certification. The Respondents state in paragraph 4 of the Reply as follows:

The individual Applicants were not employees in the construction industry or the industrial and commercial section of the construction industry and therefore were not employees in the unit on the date of the Application for Revocation, as required by s. 20 of Labour Act.

In fact, there were no employees in the unit on that date. Furthermore, the application is untimely, pursuant to s. 12 and s. 20 of the Labour Act.

The Board convened on the 9th day of July, 2010 for the purpose of reviewing the Application and determined that a decision could be made without further input from the parties.

Section 20 of the *Labour Act* reads as follows:

20. (1) An employer or a trade union named in a certification order or any employee in a unit for which a trade union has been certified as bargaining agent by such certification order may apply to the board for the revocation of such certification on the ground that a majority of the employees in such unit no longer wish the trade union to act as bargaining agent on their behalf.

(2) If the board is satisfied that the majority of the employees in such unit no longer wish the trade union to act as bargaining agent on their behalf, the board shall revoke the certification of the trade union.

(3) Where the certification of a bargaining agent is revoked under this section, the employer is not required to bargain collectively with the bargaining agent, and a collective agreement in effect at the time of the revocation of the certification of the bargaining agent is void and of no effect, but this does not prevent the bargaining agent from making an application under section 12.

(4) Sections 12 and 13 apply with the necessary changes to applications under this section. R.S.P.E.I. 1974, Cap. L-1, s.19.

Section 12 of the Act is also relevant. It states:

12. (1) A trade union claiming that a majority of employees of an employer in a unit that is appropriate for collective bargaining wish that the trade union be certified as bargaining agent on their behalf may, subject to the rules of the board and in accordance with this section, apply to the board to be certified as bargaining agent of the employees in the unit.

(2) Where no trade union is certified as bargaining agent for any of the employees in the unit and the employees are not bound by a collective agreement, the application, subject to subsection (7), may be made at any time.

(3) Where a trade union is certified as bargaining agent for any of the employees in the unit, but no collective agreement binding on such employees has been entered into, the application may be made at any time after ten months from the date of certification, but not before, without the consent of the board.

(4) Where a collective agreement binding on any of the employees in the unit is in force and the agreement is for a term of not more than two years, the application may be made only after the commencement of the last two months of the term of the agreement.

(5) Where a collective agreement is in force and the agreement is for a term of more than two years, the application may be made only after the commencement of the twenty-third month of the term and before the commencement of the twenty-fifth month of the term and during the two-month period immediately preceding the end of each year of the term that the agreement continues to operate thereafter or after the commencement of the last two months of the term, as the case may be.

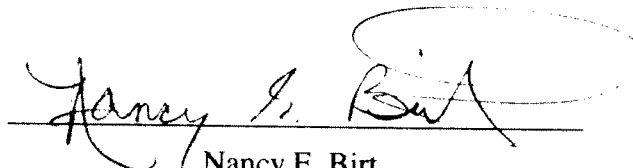
In the application before the Board, the Collective Agreement is dated the 23rd day of June, 2008, with a termination date of the 28th day of February, 2011. Pursuant to section 12(5), it is clear that the timing of the application to revoke a certification is mandatory and that the application should have been made after the commencement of the twenty-third month of the term and before the commencement of the twenty-fifth month of the term. The issue of timing has been addressed by the Board in several prior decisions. In *Williams v. United Food and Commercial Workers Union, Local 864*, (99-017) the Board quoted from Adams on Canadian Labour Law as follows:

These third party rights are essential to the public order achieved by the statutory regulation of collective bargaining rights and obligations.

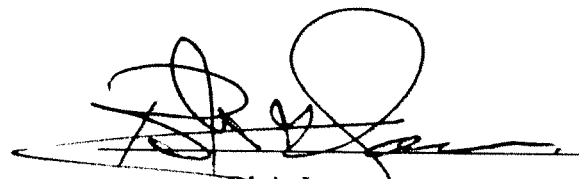
Based on the term of the collective agreement, commencement of the twenty third month is the 23rd day of April, 2010. The application was filed and dated the 16th day of April, 2010. Accordingly, the Board has no choice but to dismiss the application on the basis that it is not timely.

With regard to the additional issue raised by the Respondent that the employees were not proper parties to make the application to revoke on the basis that they were not employees in the bargaining unit, the Board has no need to address this issue at this time. It may well be a relevant consideration at a later date, but as the application is dismissed because it is not timely, the Board makes no comment on the other issue raised.


Accordingly, based on the facts before the Board and the relevant legislation, the Board concludes that the application dated the 16th day of April, 2010 is dismissed.


Nancy E. Birt
Chairperson


Judy Hughes
Member


Blair James
Member

THIS DECISION was made by the Prince Edward Island Labour Relations Board on 12th day of August 2010, and issued under the hand of the Chief Executive Officer.


Shawn M Shea
Chief Executive Officer