

File No. 13-023  
14-014  
Decision No. 14-015

**IN THE MATTER OF AN APPLICATION FOR REVIEW OF A CERTIFICATION ORDER FILED JULY 28, 2014 (13-023)**

**IN THE MATTER OF AN APPLICATION FOR RECONSIDERATION OF A DECISION FILED AUGUST 5, 2014 (14-014)**

**IN THE MATTER OF AN APPLICATION FOR REVOCATION OF A CERTIFICATION ORDER FILED AUGUST 5, 2014 (14-015)**

**BETWEEN:**

**H-LINE ENTERPRISES**

**APPLICANT**

**AND:**

**INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS,  
LOCAL 1432**

**RESPONDENT**

**Murray L. Murphy, QC  
Stephen J. Carpenter**

**Counsel for Applicant**

**Gordon N. Forsyth, QC  
Raymond Larkin, QC**

**Counsel for Respondent**

## **DECISION**

### **Background**

1. On July 9, 2014 the Prince Edward Island Labour Relations Board (the "Board") issued a decision (the "Decision") which, *inter alia*, ruled that the International Brotherhood of Electrical Workers, Local 1432 (the "Respondent Union") was the exclusive certified bargaining agent for all employees of H-Line Enterprises (the "Applicant Employer") employed in Prince Edward Island as *journeyman lineman, apprentices, arborist and apprentice arborist/labourer and all other employees involved in the line construction for the Province of PEI, excluding office personnel*.

2. Pursuant to the Decision, and on the same date, the Board issued a Certification Order certifying the *International Brotherhood of Electrical Workers (IBEW), Local 625 (Formerly Local 1432)* as the bargaining agent for the aforesaid employees of the Applicant Employer. An Amended Certification Order was issued by the Board on July 10, 2014, changing Local 625 to Local 1928, further to information received from the Respondent Union.

3. On July 28, 2014 the Applicant Employer filed an Application for Review of the Certification Order, and on August 5, 2014 filed an Application for Revocation of the Certification Order and an Application for Reconsideration of the Decision. The Respondent Union filed Responses to all three of these Applications as brought by the Applicant Employer.

4. Following the above exchange of documents, the Parties entered into discussions and contacted the Board to propose terms of settlement that would result in a resolution and conclusion of all matters before the Board involving the Parties. The Parties proposed that the matter of the Certification of the bargaining unit would be determined by a representation vote of employees presently within the proposed bargaining unit. The Parties reached agreement on the voter list, which comprised all 34 current employees of the Applicant Employer who worked within the trade jurisdiction of the Respondent Union. In the event of a majority vote against collective bargaining, the Parties agreed that the Respondent Union would not file a further Application for Certification involving the Applicant Employer during a six (6) month period from the date of the vote. Both parties agreed to be bound by the result of the vote and not appeal, start any new proceedings or revive any existing proceedings.

5. The Board accepted the proposed terms of resolution as jointly recommended by the Parties. After the Board CEO posted the necessary notices and advertisements concerning the vote, in accordance with the Regulations made pursuant to the Prince Edward Island *Labour Act*, (the *Act*) the membership vote proceeded on October 23, 2014. The vote was conducted to the satisfaction of the Scrutineers appointed by the Applicant Employer and the Respondent Union, both of whom raised no objections during the vote process and who ultimately signed Form 28: Report of Returning Officer (Representation Vote). The results of the representation vote, as noted on the Report of the Returning Officer, revealed thirty-two (32) ballots cast out of thirty-four (34) eligible voters, with seven (7) votes in favour of bargaining collectively through the Respondent Union and twenty-five (25) votes against such collective bargaining.

6. On October 28, 2014 the Board received correspondence from counsel for the Applicant Employer which confirmed the Applicant Employer's acceptance of the outcome of the representation vote and the Report of the Returning Officer dated October 23, 2014. The Applicant Employer requested that the July 10, 2014 Certification Order be revoked retroactively to its date of issuance, such that the Certification Order never existed in the first place, and confirmed the implementation by agreement of the six (6) month "time bar" on further Applications for Certification involving the parties. The Applicant Employer further confirmed the withdrawal of its three (3) Applications as noted above. By email of the same date, counsel for the Respondent Union indicated the Respondent Union's consent to the foregoing terms as set out in counsel for the Applicant Employer's letter of October 28, 2014.

## Cases Considered

7. *Bickerton v. Bickerton* (1975), 9 O.R. (2d) 333 (Ont. S.C.)

## Decision

8. The Board has reviewed the documents filed in this matter by the Parties together with the terms of Agreement reached by the Parties which resulted in the representation vote held on October 23, 2014. The Board has further reviewed the Report of the Returning Officer following the representation vote, and the subsequent written request from the Applicant Employer to withdraw its three (3) Applications presently before the Board. Finally, the Board has considered the Respondent Union's consent to: 1) the binding nature of the representation vote; 2) the six month "time bar" on further Applications for Certification with respect to this employer; and 3) the Applicant Employer's withdrawal of its Applications. Ultimately, the Agreement reached by the Parties puts to an end all matters presently before the Board involving the Parties.

9. With respect to the Applicant's request for revocation of the Certification Order retroactive to July 10, 2014 (the date of issuance of the Certification Order), the Board references section 4 of the *Act*, which provides the following discretion and jurisdiction:

*4(1) The board has exclusive jurisdiction to exercise the powers conferred upon it by or under this Act and to determine all questions of fact or law that arise in any matter before it, and the action or decision of the board thereon is final and conclusive for all purposes, but nevertheless the board may at any time, if it considers it advisable to do so, reconsider any decision, interim order, order, direction, declaration or ruling made by it and vary or revoke any such decision, order, direction, declaration or ruling.*

10. The Board further references its options pursuant to section 54(7) of the *Act*, when determining an employer's Application for Review of a Certification Order. Section 54(7) reads as follows:

*54(7) Upon receipt of an application under subsection (6) the board shall conduct a review and shall either confirm, vary or rescind such order and where the order is rescinded, subsection 20(2) applies.*

11. In its Decision, the Board conducted a thorough review of the effect of revoking and rescinding a Certification Order. The act of rescission results in the Certification Order being declared "void in its inception", and put to an end "as though it never were" [*Bickerton v. Bickerton* (1975), 9 O.R. (2d) 333 (Ont. S.C.)]. The Parties are placed in the position that they would have been had the Certification Order not issued.

12. Given the agreement of the Parties in this matter, and the authority vested in the Board by the *Act*, the Board hereby orders the revocation of the Certification Order such that the Certification Order is rescinded effective as of its date of issuance, being July 10, 2014.

13. With respect to the matter of the agreed-upon “time bar”, the Board references section 13(7) of the *Act* which grants the Board the discretion to impose such a bar on Applications for Certification. Section 13(7) reads as follows:

*13(7) If the board is not satisfied that the applicant trade union is entitled to be certified under this section, it shall dismiss the application and may designate the length of time that must elapse before the same applicant may make a new application.*

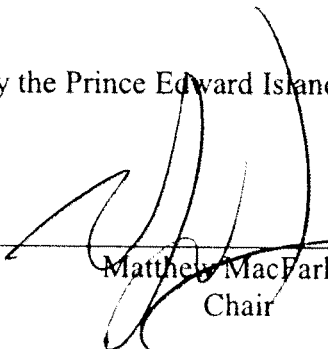
14. The representation vote has concluded that the Respondent Union is not entitled to be certified pursuant to the *Act*, and given the prior agreement of the Parties that a six (6) month time bar would follow a “no vote”, the Board is prepared to exercise its discretion pursuant to section 13(7) of the *Act*.

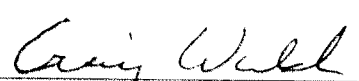
15. The Board therefore orders, pursuant to the agreement of the Parties and the authority vested in the Board pursuant to the *Act*, that for a period of six (6) months commencing on October 23, 2014, the Respondent Union shall not bring a new Application for Certification involving the Applicant Employer.


16. In conclusion, the Board hereby orders as follows:

- a) Further to the results of the representation vote, which indicated that the Respondent Union did not have majority support for collective bargaining, the Certification Order dated July 10, 2014 is hereby revoked;
- b) Commencing as of October 23, 2014, and continuing for a period of six (6) months thereafter, the Respondent Union shall not bring a new Application for Certification involving the Applicant Employer;
- c) The Applicant Employer’s request for leave to withdraw its Application for Review of the Certification Order is granted, and this Application is hereby ordered withdrawn;
- d) The Applicant Employer’s request for leave to withdraw its Application for Revocation of the Certification Order is granted, and this Application is hereby ordered withdrawn; and,
- e) The Applicant Employer’s request for leave to withdraw its Application for Reconsideration of the Decision is granted, and this Application is hereby ordered withdrawn.

This Decision made by the Prince Edward Island Labour Relations Board on the 17<sup>th</sup> day of December, 2014.

  
Matthew MacFarlane  
Chair

  
Craig Walsh  
Member

  
Fraser MacDougall  
Member