



File No. 06-035

Decision No.

IN THE MATTER OF AN UNFAIR LABOUR PRACTICE COMPLAINT

BETWEEN:

**THE INTERNATIONAL UNION OF OPERATING ENGINEERS,
LOCAL 942**

COMPLAINANT

AND:

THE PRINCE EDWARD ISLAND DEPARTMENT OF HEALTH

RESPONDENT

COUNSEL FOR THE COMPLAINANT Mr. Paul Beauregard

COUNSEL FOR THE RESPONDENT Mr. Ronald MacLeod

DECISION

Background

An application, filed on December 1, 2006, pursuant to Subsections 10 (1) (a), (b), and (c) and "other relevant sections" of the *Labour Act*, R.S.P.E.I. 1988 Cap. L-1, as amended, made a number of allegations of unfair labour practices having been committed by the employer and requested certain relief. The Applicant requested that the Board grant "full redress including a declaration that the Employer violated the Labour Act, an order that no change to the existing terms and conditions of employment will be implemented without the full approval of the Union and the affected employees, a written apology to each aggrieved party, the assurance that the Act will not be violated in the future, and such other remedy as may be deemed just and equitable."

The Reply to the complaint, dated December 20, 2006, made certain admissions and set out the Respondent's denials of certain other allegations of the Complainant. The Respondent set out its interpretation of the various events giving rise to the allegations of unfair labour practices and took the position that it had committed no breach of the provisions of the *Labour Act*.

The Board's Chief Executive Officer inquired into the complaint and endeavored to effect a settlement of the matter complained of, however the parties were apparently well entrenched in their respective positions and not open to a negotiated settlement. There was an informal Pre-hearing Conference between Counsel and the Board's Chief Executive Officer, Mr. Roy Doucette,

to predict the main issues and hearing days required in this matter. A hearing was set for the 20th day of April, 2007. The hearing respecting these matters between the parties convened on that date, however, could not be completed. The hearing was adjourned to and was concluded on the second hearing day on the 4th day of June, 2007.

Cases Considered

- (a) *Canadian Union of Public Employees v. Toronto District School Board*, [2002] O.L.R.B. Rep. September/October 956;
- (b) *Valdi Inc.*, [1980] O.L.R.B. Rep. Aug. 1254;
- (c) *Telus Communications Inc. and TWU*, [2004] CIRB 271; and
- (d) *American Airlines Inc.*, [1981] CAN LRBR 90.

Statutes Considered

- (a) *Labour Act*, R.S.P.E.I. 1988, Cap. L-1, sections 10(1), and 11.
- (b) *Labour Act Regulations*, EC521/71, section 19.

Texts Considered

- (a) Adams, G. W., *Canadian Labour Law*, Aurora, Canada Law Book, 2006, pp. 10-8 to 10-10, 10-12 to 10-13, and p. 10-20.

Evidence

The written evidence before the Board on these matters is in the form of sworn affidavit evidence in the Application filed by the Complainant and the Reply filed by the Respondent as referenced above and duly filed with the Board. The Complainant filed a composite exhibit containing five (5) documents in support of its case. The Respondent filed two (2) exhibits as support for its case. Counsel for the Respondent undertook to provide a copy of the “official” version of the Work Schedule which was presented in “Draft” form at Tab 4 of the Complainant’s composite exhibit.

There was oral testimony received from a total of seven (7) witnesses. Under subpoena and called on behalf of the Complainant, were three Front Desk Staff Members namely, Ms. Jennifer Knowles, Ms. Christine Wilson and Ms. Donna Malone. Also testifying on behalf of the Complainant was Ms. Tammy Chaisson, President of the International Union of Operating Engineers, Local 942. The Respondent called three witnesses being the Souris Hospital Administrator, Mr. Terry Campbell, the Director of Nursing, Ms. Edna Miller, and the Department of Health, Human Resources Officer East, Souris/Montague, Ms. Muriel MacLeod.

Issues

The issues that are to be considered and decided by this panel of the Board are listed as follows:

1. Whether there have been violations of the *Act* as alleged; and
2. Whether there are grounds for granting the relief sought.

Preliminary Matters

The Board, at the commencement of the hearing, outlined the background of the case, noted that there had been a number of informal pre-hearing conferences held and then cited the issues in these matters as set out above.

Counsel for the Complainant made, and the Board granted, the motion for exclusion of witnesses.

The hearing proceeded with receipt of the evidence and argument in relation to the matters.

Decision

This Panel of the Board assures the Parties that it has made a thorough review all of the evidence presented and has given careful and complete consideration to the body of evidence presented and has done so in light of the able submissions advanced by the respective Counsel.

The Law

In its deliberations the Panel has been particularly mindful of the provisions of sections 10(1), and 11 of the *Labour Act*, and section 19 of the *Regulations* of the *Act*. The provisions of section 10 (1) state:

10. (1) No employer, employers' organization or an agent or any other person acting on behalf of an employer or employers' organization shall
- (a) interfere with, restrain or coerce an employee in the exercise of any right conferred by this Act;
 - (b) participate or interfere with the formation, selection or administration of a trade union or other labour organization or the representation of employees by a trade union or other labour organization; or contribute financial or other support to such trade union or labour organization;
 - (c) suspend, transfer, refuse to transfer, lay-off, discharge, or change the status of an employee or alter any term or condition of employment, or use coercion, intimidation, threats or undue influence, or otherwise discriminate against any employee in regard to employment or any term or condition of employment, because the employee is a member or officer of a trade union or has applied for membership in a trade union;
 - (d) refuse to employ any person because such person is a member or officer of a trade union or has applied for membership in a trade union or require as a condition of employment that any person shall abstain from joining or assisting or being active in any trade union

- or from exercising any right provided by this Part;
- (e) fail or refuse to bargain collectively in accordance with this Act;
- (f) call, authorize, counsel, procure, support, encourage or engage in a lockout except as permitted by section 41.

Section 11 of the *Act* reads:

11. (1) Where a complaint in writing is made to the board that an employer, employers' organization, trade union or other person is committing or has committed an act prohibited section 10 or otherwise prohibited under this Act, the chief executive officer or an officer of the Department of Community and Cultural Affairs, appointed by him shall inquire into the complaint and endeavour to effect a settlement of the matter complained of.

(2) The chief executive officer or the officer appointed by him shall report the results of his inquiry and endeavours to the board.

(3) If the chief executive officer or other officer appointed by him, as the case may be, is unable to effect a settlement of the matter complained of, the board shall conduct a hearing on the complaint, and, if the board is satisfied that an employer, employers' organization, trade union or other person is committing or has committed an act prohibited by this Act, the board, shall, by order, make such award, give such direction, or take such other action as the board considers just and necessary in the circumstances and, without restricting the generality of the foregoing, may, by such order or subsequent order,

(a) direct the employer, employers' organization, trade union or other person to cease doing the act and to rectify in such manner as the board considers just any violation of this Act;

(b) direct an employer to pay to an employee a sum equal to the wages, salary or other remuneration lost by the employee by reason of the employer's violation of this Act;

(c) direct an employer to reinstate an employee in his employ at such date as in the opinion of the board is just and proper in the circumstances in the position that the employee would have held but for a suspension, transfer, refusal to transfer, lay off, discharge or change of status of the employee done or made by the employer contrary to this Act;

(d) direct an employer to employ a person at such date as in the opinion of the board is just and proper in the circumstances in the position that the person would have held but for the refusal of such employer to employ such person contrary to this Act.

(4) The board may in any order made under subsection (3) declare the manner of service of such order upon any employer, employers' organization, trade union or other person to whom such order is directed.

(5) Where any such complaint arises out of the suspension, transfer, refusal to transfer, lay off, discharge or change of status of an employee or the refusal to employ or re-hire any person, the burden of proof that the suspension, transfer, refusal to transfer, lay off, discharge, change of

status, or refusal to employ or re-hire, was for just cause and not in violation of this Act, is upon the person charged. R.S.P.E.I. 1974, Cap. L-1, s.10; 1986, c.5, s.2; 1987, c.6, s.13; 1988, c.36, s.4; 1990, c.27, s.2; 1993, c.29, s.4; 1994, c.32, s.6,18; 2000,c.5,s.3.

Section 19 of the *Regulations* provides that:

19. (1) A complaint of unfair labour practice shall be made in Form 11 and shall be verified by statutory declaration.

(2) The complaint shall identify the person or persons claiming to have been aggrieved, name the respondent party or parties against whom the complaint is made, state the allegation of unfair labour practice and the section of the Act alleged to have been violated and state the remedy desired by the complainant.

(3) The chief executive officer shall forthwith send a copy of the complaint to the respondent party or parties against whom the complaint is made and within seven days of the receipt of a copy of the complaint, the respondent party or parties shall file with the Board a reply to the complaint specifically admitting or denying the statements contained in the complaint. (EC521/71)

Findings of Fact

The Board finds that there were a number of particularly significant events that come to bear on the circumstances of these matters. The first was the reduction of hours of operation of the emergency room facilities at the Souris Hospital. Next came two Front Desk Staff meetings. There was an inquiry made of the Union Local by one of the employees as to the propriety of the proposal and a resulting call from the Local to management. This resulted in the immediate supervisor being called to the office of her manager. Then there was a chance encounter between the immediate supervisor involved and the Front Desk employee who had made the inquiry to the Union Local. What is also prevalent throughout this series of events is what the Board perceives as what could be described as either as highly cautious state of communications, and if not that then, at times, an all out failure to communicate on the part of both parties.

The first event, the reduction of hours of operation, served generally to raise the tension levels of all of the participants in the work place. Employee tensions centered around their available hours of work and even job security. The supervisory and management concerns centered on attempting to allay the fears of employees and attempts at not contributing to further cause for concern on the part of employees.

On Friday, the 3rd day of November, 2006 there were four (4) employees and two (2) supervisory/ management representatives in attendance at a staff meeting with a notation that there were two persons absent. The minutes of this meeting are titled "*CLERK IV/MEDICAL RECORDS*

MEETING”, which minutes were submitted as Exhibit R-1. At this meeting management set out a proposal for two persons to be trained regarding duties including payroll data entry, incident report date input and Accreditation as well as a change in certain hours of work. The entry in the minutes under the sub-heading of Schedule concludes to the effect that:

*... still needs to be taken to union for approval of working evenings
on Sundays and then on Monday*

*We were asked to think it over on the weekend and are welcome to go to
Edna individually and tell her our thoughts and if we are interested or
not. Asked to keep to ourselves until decision is made.*

As to a meeting held on the following Wednesday, November 8, 2006, the minutes record that there were four (4) employees, three (3) of whom had been at the previous meeting, and the same two (2) management representatives in attendance. Reference to the union in these minutes are to the effect that:

*This payroll issue will be brought to the union. Decision needs to be made
very soon. Training will be starting in a month or two for the new
Computerized payroll system.*

Following these meetings one of the employees directly affected made an inquiry of the Union Local as to the propriety of these proposals and how the Local perceived them and her perception that management was asking employees not to contact the union about the matters. Meanwhile, no one from management had spoken to the Local as to these proposals. A Union Local representative and a management representative had a telephone conversation with respect to the Union’s perception that the proposals would be leading to a reduction of hours of work, the employees perception that management was asking employees not to contact the union, and the Local not having been contacted and involved in discussions from the outset. This led to management calling to the office the immediate supervisor to discuss the matters raised by the telephone conversation with the Union Local representative. All of these events set the stage for the next event in this series of events.

The immediate supervisor emerges from this meeting with the perception that, although she had gone to great lengths to explain the proposal, she was being called to task about her handling of the staff meetings. Also, she believes that she is being accused of deceiving employees about management being in contact with the Union Local, and feeling that, despite her best efforts to be abundantly clear that the proposal would involve no reduction of hours of work of any employees, someone has informed the Union that there could be job losses or reduction in hours. By chance, and unknown to her, the first person she meets is the very same employee who had already made the contact with the Union Local about her concerns as an employee about the management actions thus far. There is a very brief exchange between these two people, but it is an exchange that sets in

motion the formal complaint process. Apparently feeling hurt and somewhat betrayed the immediate supervisor blurts out statements to the effect that: "Did you contact the Union? I am going to get to the bottom of this." The employee's apparent reaction to this encounter was to wonder why "they" did not want the employees to contact the Union.

These latest events are relayed to the Union Local and they understandably serve to not only confirm but to heighten the Local's concern that its rights to communicate with its members are being trampled by actions of management. The formal complaint is laid and is replied to and not much further communication at all occurs between the parties up to the hearing of the complaint.

Conclusion

While there were accusations leveled by each party against the other of their counterpart's failure to communicate, the Board has concluded that effective and timely communication was lacking on the part of both parties to this matter. By the time that the matter came to the attention of the Board the parties were so deeply entrenched in their respective positions and feeling so slighted by what each of them perceived as being faced with a non-communicative opposing party that the conciliation efforts by the Board were futile.

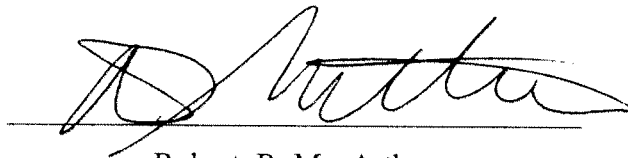
From its appreciation of the series of events, the Board has little trouble in observing how the Complainant, based on its members' recollection and perception of the events, was led to the conclusion that there had been an interference with the legislated rights of its members. Either of the events in isolation would perhaps not have led to such a conclusion, however, given the series of events and the culmination of their total impact, it is apparent to the Board as to how Union Local 942 reached its decision to level the complaint of unfair labour practices against the Respondent.

Although there are sufficient elements in the actions of the employer to amount to justification for the leveling of allegations of unfair labour practices against it, the Board's appreciation of the evidence offered by way of explanation of those actions, the demeanor of the witnesses on these specific matters and the overall nature of how these events unfolded, have all led to the Board being unable to find that there truly existed an "anti-union animus" on the part of this employer. There was mis-communication, mis-interpretation, harsh words spoken in haste and conclusions reach by both parties based on this mis-information and mis-interpretation, but the Board cannot find that there was actually an anti-union animus displayed by this employer in this case.


The Board emphasizes that the Complainant was more than justified in bringing the complaint and that the failure on the part of both of the parties to enter into effective and timely communication is probably a root cause of what evolved into a highly stressful situation for all concerned.

The Board's findings of fact, reached on the basis of all of the available evidence, leads to the conclusion that the employer is not guilty of having committed unfair labour practices in the circumstances of this particular case. While it must therefore dismiss the complaint, the Board does so with the hope that these parties have through all of this process learned some very valuable lessons in regards to the value of their effective communication with their counterparts. Each of the parties has paid a high price for these lessons and surely they will avail themselves in future of the wisdom to reap the benefits of them.

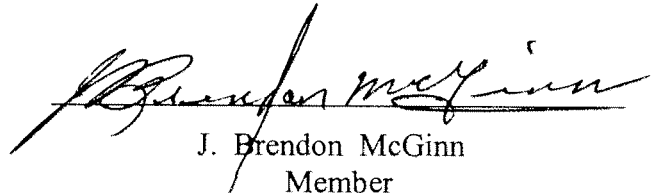
The Board finds that the requisite grounds required to empower the Board to grant the Remedial Order that was requested by the International Union of Operating Engineers, Local 942 are not present in the circumstances and rules to dismiss the complaint of unfair labour practice in this instance.



Robert R. MacArthur
Chair

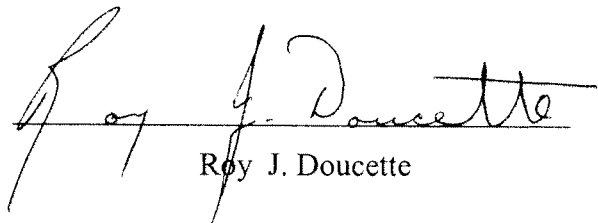


Elizabeth MacFadyen
Member



J. Brendon McGinn
Member

This Decision made by the Prince Edward Island Labour Relations Board on the day of October 2, A.D., 2007, and issued under the hand of its Chief Executive Officer on the day of October 8, A.D., 2007.



Roy J. Doucette