



IN THE MATTER OF AN APPLICATION FOR CERTIFICATION

BETWEEN:

**INTERNATIONAL UNION OF OPERATING ENGINEERS,
Local 942**

APPLICANT

AND:

HOLLAND COLLEGE - ADULT & COMMUNITY EDUCATION

RESPONDENT

DECISION

Background

The Applicant, the International Union of Operating Engineers, Local 942, filed an Application for Certification on 25 March 2008, pursuant to sections 12 and 13 of the *Labour Act*, R.S.P.E.I. 1988 Cap.L-1, and section 3 of the *Labour Act Regulations* as amended, requesting that the Prince Edward Island Labour Relations Board (“the Board”) certify the Applicant as bargaining agent of the employees in the unit being set forth as appropriate for collective bargaining purposes. That unit is described in paragraph 6 of the Application as:

All E.S.L., E.E.E.L.S., and LINC instructors within the province of P.E.I.

The Respondent employer, Holland College - Adult & Community Education, filed a Reply to the Application for Certification on 21 April 2008.

Statutes Considered

1. ***Labour Act*, R.S.P.E.I. 1988 Cap. L-1, sections 12 and 13.**
2. ***Labour Act, Regulations*, (EC 521/71) section 3.**

Evidence

The Application was accompanied by the membership evidence, the Applicant's Constitution and Bylaws and list of its officers. The Reply included the position of the respondent on the key issues and provided evidence of the list of employees it contended should be included in the unit.

Issue

The issue before the Board in this matter is whether the available evidence demonstrates the existence of each of the elements necessary to enable the Board to grant the Certification Order being sought.

Decision

Careful consideration has been given by the Panel to all of the evidence presented and the submissions advanced by the respective Parties regarding this Application for Certification being identified as Board file number 08-005.

The Board has reviewed the Application for Certification and the supporting evidence filed therewith and the evidence given in support of the Reply and all submissions in light of and pursuant to sections 12 and 13 of the *Labour Act* and section 3 of the *Regulations of the Act*. The *Act* reads:

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 anytime.

(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.

(6) Where a collective agreement referred to in subsections (4) or (5) provides that it will continue to operate for a further term or successive terms if neither party gives to the other notice of termination or of its desire to bargain with a view to the renewal of the agreement or to the making of a new agreement, the application may be made during the further term or successive terms only during the last two months of each year of such further term or successive terms, or after the commencement of the last two months of such term or successive terms that it so continues to operate, as the case may be.

(7) Where a collective agreement binding on any of the employees in the unit has expired and notice has been given pursuant to section 23, but a new collective agreement has not been entered into, no application for certification as bargaining agent of any of the employees in the bargaining unit defined in the collective agreement, whether the bargaining agent named in such collective agreement is or is not certified, shall be made until ten months after the expiration of the said agreement, except with the consent of the board.

(8) Notwithstanding subsection (7), no such application shall be made without the consent of the board during a lawful strike or lockout. R.S.P.E.I. 1974, Cap. L-1, s.11.

13. (1) Where a trade union makes application for certification under this Part, the board shall determine whether the unit in respect of which the application is made is appropriate for collective bargaining.

(2) The board may, before certification, either to make the unit appropriate for collective bargaining or for other good reason, include additional employees in or exclude employees from the unit.

(3) For the purposes of subsections (1) and (2) and for the purpose of determining whether a majority of the employees in the unit wish the applicant trade union to be certified as bargaining agent of such employees, the board shall

(a) make, or cause to be made, such examination of records or other inquiries and hold such hearings as it considers necessary;

(b) take such other steps as it considers appropriate to determine the wishes of the employees in the unit as to the selection of a bargaining agent to act on their behalf including, whenever the board considers it necessary, the taking of a representation vote of such employees.

(4) Where the board has taken a representation vote under this Act and a majority of eligible employees in the unit appropriate for collective bargaining vote in favour of the applicant union, the board may determine that a majority of the employees in the unit wish the applicant union to be certified as bargaining agent of such employees.

(5) If the board is satisfied that a majority of the employees in a unit appropriate for collective bargaining wish the applicant trade union to be certified as bargaining agent of such employees, the board shall certify the trade union as the bargaining agent of the employees in that unit.

(6) In determining what number of employees constitute a majority of the employees of a unit pursuant to subsection (5), the board may consider any increase in the number of employees in the bargaining unit after the application was made, and the board may consider any anticipated increase in the number of employees in the bargaining unit.

(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.

(8) In determining the number of eligible employees for the purpose of subsection (4), employees who do not cast their ballots shall not be counted as eligible employees. R.S.P.E.I. 1974, Cap. L-1, s.12; 1988,c.36, s.1.

The Regulations at section 3 state:

3. (1) An application by a trade union for certification as bargaining agent pursuant to the Act shall be made in Form 1.

(2) Concurrently with the filing of an application for certification, the applicant trade union shall file with the Board the material upon which it relies to establish its right to certification and such material shall include

(a) a list of persons in the proposed bargaining unit who wish that the applicant trade union be certified as bargaining agent on their behalf;

(b) evidence that the persons in the list referred to in clause (a) wish that the applicant trade union be certified as bargaining agent on their behalf;

(c) a copy of its constitution, rules and bylaws, or other instruments or documents containing a full and complete statement of its objects and purposes;

(d) a list of its officers.

(3) The material filed by the applicant trade union under clauses 2(a) and (b) shall be for the information of the Board only and shall not be available to or open for inspection by any other party to the proceedings.

(4) A person shall be deemed by the Board to wish that the applicant trade union be certified as bargaining agent on his behalf if at the date of application

(a) he was a member in good standing of the applicant trade union, and, had paid at least two dollars as union dues within three months preceding the date on which the application was filed; or

(b) he has signed a document stating that he wishes the applicant trade union to be certified as bargaining agent on his behalf and has within three months preceding the date on which the application was filed paid at least two dollars as union dues or fees.

(EC521/71)

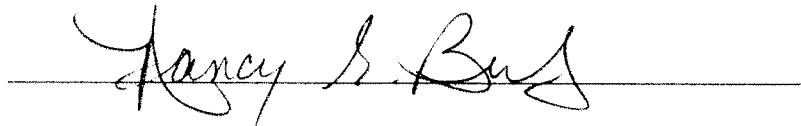
In reviewing any Application for Certification, the Board must address the following points, namely:

1. The status of the parties;
2. The appropriateness of the bargaining unit;
3. The composition of the unit;
4. Whether there is a majority of the employees in that appropriate unit supporting the certification of the applicant as their agent for collective bargaining purposes; and
5. Whether there are grounds for granting the relief sought.

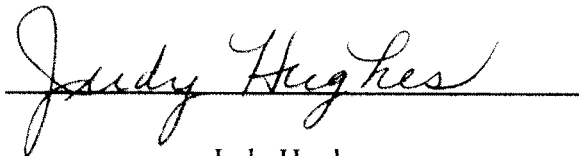
The Board is entirely satisfied that the appropriate documentation was filed with the Board engendering the Board with jurisdiction to hear the matter pursuant to section 3 of the *Regulations*.

The Board has reviewed the membership evidence filed with the Application for Certification and concludes that there is a clear majority of the employees of the Respondent who desire the Applicant to represent them for collective bargaining purposes.

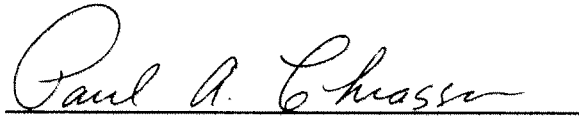
Accordingly, the Board is satisfied that the unit is appropriate for collective bargaining, that a majority of employees of the Respondent employer wish the Applicant to be certified to represent them for collective bargaining purposes. The Board finds that all requisite grounds exist to empower the Board to grant the Applicant the Certification Order requested. Accordingly the Board will issue a Certification Order to that effect and the Board so rules.



Nancy E. Birt
Chair

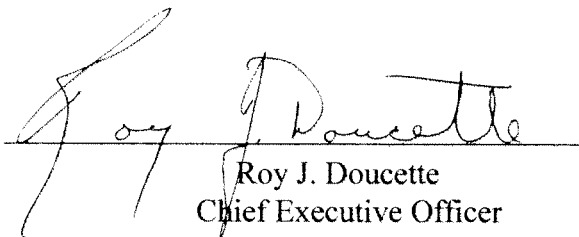


Judy Hughes
Member



Paul A. Chiasson
Member

This Decision made by the Prince Edward Island Labour Relations Board on the 16th day of May, A.D., 2008, and issued under the hand of its Chief Executive Officer on the 20th day of May, A.D., 2008.



Roy J. Doucette
Chief Executive Officer