



File No. 14-002

Decision No.

IN THE MATTER OF AN APPLICATION FOR CERTIFICATION

BETWEEN:

CANADIAN UNION OF PUBLIC EMPLOYEES, LOCAL 5182

APPLICANT

AND:

CAPITAL AREA RECREATION INC.

RESPONDENT

Glen Gallant

Counsel for the Applicant

J. Gordon MacKay, Q.C.

Counsel for the Respondent

DECISION

Background

On the 12th day of February, 2014, the Applicant, Canadian Union of Public Employees (“CUPE”), filed an Application for Certification with the Prince Edward Island Labour Relations Board (the “Board”) pursuant to the *Labour Act*, R.S.P.E.I. 1988, Cap. L-1 and *Regulations*. The Respondent named in the application is Capital Area Recreation Inc. and the detailed description of the unit for which certification was sought is described in paragraph 9 of the Form 1 as “**all employees of Capital Area Recreation Inc. employed as Arena Attendants and Sanitation Technicians in Charlottetown, save and except those excluded by the Labour Act, R.S.P.E.I. 1988, c. L-1.**”

Capital Area Recreation Inc. (“CARI”) filed a Reply to the Application dated the 21st day of February, 2014, stating in paragraph 5 as follows:

The unit claimed to be appropriate for collective bargaining is comprised of 3 full-time Arena Attendants, 5 full-time Sanitation Technicians and 2 full-time seasonal Sanitation Technicians.

The issue before the Board is whether the Application for Certification should be granted.

Statutes Considered

1. *Labour Act*, R.S.P.E.I. 1988, Cap. L-1
2. *Labour Act Regulations*

Decision

The Applicant is a certified trade union within the meaning of the legislation and has met the technical requirements of the legislation in submitting the application. The Board determined it has jurisdiction to decide the matter. The Respondent is the operator of a recreation facility in the Charlottetown area.

The Application for Certification stated that the unit for which certification was sought was comprised of eight employees. The Applicant filed five union cards with the Application. The Respondent stated in its Reply that the actual unit is comprised of 10 employees. Following receipt of the Respondent's Reply, by letter dated March 11, 2014, the Union submitted that the total number of employees of the employer in respect of which the Application had been made is nine as opposed to ten. The Applicant alleged that one of the named employees should not be considered part of the unit. In particular, the Applicant alleged that the duties performed by the employee were not the same as other employees in the group, the employee was a part-time/seasonal employee, as well as that the employee was not paid through the employer, but that there was external funding for this one employee.

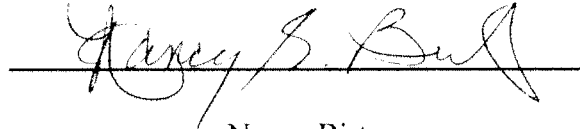
By written reply dated March 18, 2014, the Respondent provided clarification of the employee's job description as well as a response to the other matters raised by the Applicant, and in particular, confirmed that the employee was paid directly by the Respondent. The Board reviewed the question of whether the employee should be included in the unit sought to be certified and the materials provided by both parties.

The Board concludes that the employee is properly considered a part of the unit for which certification is sought. The employee performs substantially the same duties as other employees in the unit, and should not be excluded only because he is considered a seasonal employee. There is another employee in the unit who is also considered seasonal. Accordingly, the Board concludes that the total number of employees in the unit is ten employees.

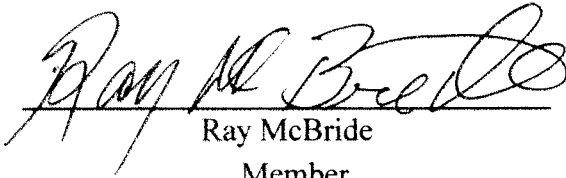
The Board also reviewed hand written letters received by three employees prior to the terminal date, each stating that they no longer wanted to be part of a union. Two of the three letters were written by employees for whom their signed union cards were received with the Application for Certification. The third letter was written by an employee for whom a signed union card had not been received with the Application for Certification.

The Board has concluded based on the material before it that the unit is comprised of ten employees, and accordingly, the Applicant would need greater than five employees to have signed cards to meet the test for certification set out in section 12 of the Act. As only five cards were filed with the Application, the Application does not have a majority of employees. It is therefore not necessary to consider the letters filed by the employees.


For all of the above reasons, the application is therefore dismissed.



Nancy Birt
Chair



Ray McBride
Member



Judy Hughes
Member

This Decision made by the Prince Edward Island Labour Relations Board on the 3rd day of June, A.D., 2014, and issued under the hand of its Chief Executive Officer on the 3rd day of June, A.D, 2014.



Shawn M. Shea
Chief Executive Officer