



GOVERNMENT OF PRINCE EDWARD ISLAND
LABOUR RELATIONS BOARD

J. J. Revell, B. Comm., M.B.A.
Chairman
W. S. MacKinnon
Chief Executive Officer

DEPARTMENT OF LABOUR
P.O. BOX 2000
CHARLOTTETOWN
PRINCE EDWARD ISLAND
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DECISION

Re: Unfair Labour Practice Complaint

- between -

Canadian Union of Public Employees Local 2523 COMPLAINANT;

- and -

Eastern Manor Inc. (Livingston & MacArthur Nursing Home) RESPONDENT;

This Application was filed with the Board on December 7, 1981, and alleges that Licensed Nursing Assistants employed by the Respondent were given layoff notice because they had become members of the Complainant union, and that such action by the employer was a violation of Section 9, subsection 1(c), of the Act.

The Board investigated the matter and received a written report on January 7, 1982, from the Chief Executive Officer of the Board in which he advised that he was unable to effect a settlement between the parties. The Board conducted a Hearing on January 25 and 27, 1982. The Board considered the evidence submitted and on February 22, 1982, issued a Board Order which found that the Respondent employer had violated Section 9, subsection 1(c), of the Act and further ordering that the Licensed Nursing Assistants named in the Complaint be maintained in their positions and that the employer make no change in their employment classification before June 18, 1982. The Board further ordered that any such change that would be contemplated must be made with due notification to and negotiation with the certified bargaining agent.

The reasons for that Decision follow:

- (1) The Complainant union was certified as bargaining agent for a unit of employees of Eastern Manor Inc. including the Licensed Nursing Assistants on July 2, 1981.
- (2) Subsequent to the Certification, negotiations were carried out with the aim of reaching a collective agreement. An agreement was reached on October 15, 1981, and the collective agreement was signed on November 18, 1981.
- (3) Eastern Manor Inc. had negotiated for and obtained ownership of the Livingston & MacArthur Nursing Home during the early months of 1981, and from a practical point of view has been engaged in decision making affecting the operations of the Nursing Home from July 1, 1981.
- (4) Mr. Howard Johnston, Assistant General Manager, who is a resident of Ontario, gave evidence that the Respondent Company owns nine nursing homes in Ontario and two in P.E.I. He testified that the Company had been increasingly concerned about the previous management of the Nursing Home and particularly concerned about increasing costs. Mr. Johnston testified that concern was expressed to him by Stephen Dennis, Administrator of the Nursing Home, about the scheduling of Licensed Nursing Assistants and Registered Nurses, and a particular concern from Registered Nurses that they were subject to off-shift call-ins because Registered Nurses were not present on every shift and that L.N.A.'s were not qualified to carry out all of the duties that might be required when Registered Nurses were not present. This was a particular problem on the evening

and night shifts. Mr. Johnston testified that this problem was not discussed during negotiations with the bargaining agent.

(5) During the period in which the Application for Certification was pending before the Labour Relations Board, Mr. Johnston had intervened by way of Reply to the Application for Certification requesting that the Licensed Nursing Assistants be excluded from the bargaining unit. In a letter to the Board dated June 22, 1981, he expanded on the reasons for such exclusions, arguing that L.N.A.'s performed certain managerial functions in relation to other employees, particularly Nursing Aides, and that their functions made it inappropriate for them to be in the same bargaining unit as those other employees. The Board considered this argument and concluded that L.N.A.'s did not exercise managerial functions as defined by the Act, and the Certification Order was issued including L.N.A.'s in the bargaining unit.

(6) The collective agreement between the parties was signed on November 18, 1981, as referred to above. Testimony from Mr. Johnston, Ms. Colleen Huestis, Director of Nursing, and Mr. Stephen Dennis, Administrator of the Home, and testimony from Mr. Robert Crockett, Representative of Canadian Union of Public Employees, L.N.A.'s Theresa Campbell, Mildred Praught and Ann Pound who are employed at the Nursing Home, is such as to convince the Board that on November 18 and 19, 1981, Mr. Johnston made it clear that his stated intention of laying-off the L.N.A.'s was due in part to his desire that L.N.A.'s not be included in the bargaining unit, a position which he had taken during the certification process. It is clear to the Board that having been frustrated in his attempts to have this classification excluded at time of certification he chose to exercise a perceived management prerogative to accomplish the same end by eliminating the classification altogether.

(7) The L.N.A.'s affected by this decision were offered positions at the Home as Nursing Assistants, thereby effecting a demotion in their previous classification as had been negotiated into the collective agreement. The Board is of the opinion that such action, taken for the reasons stated above, is a direct violation of Section 9, subsection 1(c).

(8) The Board has given careful consideration to the submissions of the Employer, particularly the evidence of Mr. Johnston in which he expresses concern about the difficult financial circumstances of the Nursing Home. The Board acknowledges that Management should be free to make such changes in organization as would be necessary to maximize efficiency within the standards of acceptable nursing care. The Board does not wish to imply that such management discretion is not appropriate, nor does the Board wish to interfere with such discretion. However, the Board wishes to state emphatically that such discretion must be exercised within the confines of its relationship with the duly certified bargaining agent, and that in exercising such discretion management must not interfere with the rights of the employees. It is clear to the Board that in its decision to reorganize, the Employer has acted in part with the intention of interfering with those rights, and as a result has committed an Unfair Labour Practice.

This Decision was made by the Labour Relations Board on February 19, 1982.

PANEL:

J. J. Revell, Chairman
Lloyd Weeks, Member
Glen Mitchell, Member