



**GOVERNMENT OF PRINCE EDWARD ISLAND
LABOUR RELATIONS BOARD**

M. Lynn Murray, B.B.A., LL.B.
Chairman

Roy J. Doucette
Chief Executive Officer

DEPARTMENT OF LABOUR
P.O. BOX 2000
CHARLOTTETOWN
PRINCE EDWARD ISLAND
C1A 7N8

IN THE MATTER OF: AN APPLICATION FOR CERTIFICATION
BETWEEN: CANADIAN UNION OF PUBLIC EMPLOYEES LOCAL 3324 APPLICANT;
AND: NEIL'S AMBULANCE SERVICE INC. RESPONDENT

D E C I S I O N

The Board has considered the evidence and arguments presented in this matter. The Board finds that this Application for Certification is properly before this Board and that the Applicant is a trade union as defined within the Labour Act.

With the above matters satisfied, the Board's next task was to rule upon the proper bargaining unit for this matter. The Board has ruled that the proper description for the bargaining unit in this matter should be as follows:

"All employees employed as Ambulance Drivers/Attendants by Neil's Ambulance Service Incorporated save and except those excluded by the Labour Act".

Inherent within this description is the finding that the position of dispatcher is not to be included in the unit. The nature of the dispatcher's duties as well as the location where these duties were performed led the Board to this conclusion. This conclusion was held by a majority of the Board with Mr. Harry Snow dissenting for the following reason: "I do not agree with the exclusion of Dawn MacDonald. The bargaining unit should include all employees of Neil's Ambulance Service Inc. except those excluded by the Labour Act. The Dispatcher, Dawn MacDonald, is not excluded by the Labour Act and should, in my opinion, be included in the bargaining unit."

It should also be noted that the Board has ruled that Harvey Jackson should be included in the unit, as his duties were not managerial in nature but in essence were merely the duties that "a lead hand" would perform. The Applicant also questioned Mr. Jackson's inclusion in the unit due to the fact that he, on one occasion, described himself as the personnel manager and communicated the dismissal of one employee to that person. The Board has found that this is not sufficient to exclude Mr. Jackson from the unit, as the Board is satisfied that Mr. Jackson has no real input into the hiring and/or firing at the workplace and merely acted on the occasion as "the messenger" for a firing. Thus Mr. Jackson is to be included in the bargaining unit.

It should also be noted that George Carragher is included in the bargaining unit, as his unfair labour practice complaint was decided in his favor.


The last employee whose position in the bargaining unit was questioned was Allen MacDonald. The Board has ruled that Mr. MacDonald should be excluded from the unit. This decision is not a reflection on Mr. MacDonald's duties, as

essentially his duties are similar in nature to Harvey Jackson's; i.e., lead hand. The Board has, however, ruled to exclude Mr. MacDonald due to the fact that he is a shareholder and officer of the Respondent company. Although being a shareholder in the employer business will not automatically work to exclude an individual from a bargaining unit, the Board has ruled that the circumstances of this case dictate this ruling. Furthermore, as an officer of the company, Mr. MacDonald has the right to certain information of the company that could be prejudicial to the company, if disclosed, during labour negotiations. Thus it was felt that Mr. MacDonald should be excluded from the bargaining unit.

With the bargaining unit defined, the Board then directed its attention to the question of whether the Applicant had majority support for the Certification Application. After examining the evidence, the Board finds that the Applicant has satisfied section 4 of the Regulations, that indeed it does have majority support. Thus the Board rules that a Certification Order be issued in this matter. It should be noted that, for the purposes of the question of majority, the employee Kenny MacWilliams was not considered as he was not an employee of the company as of the date of Application, and since it appears from evidence that Mr. MacWilliams was hired to replace George Carragher whose dismissal was found to constitute a violation of section 9 of the Labour Act.

Thus the Board rules that a Certification Order be issued and said Order be personally served upon the Respondent company and the Applicant and be either personally served or served via registered mail upon counsel for both parties in this matter.

THIS DECISION was made by the Labour Relations Board on January 17, 1989 and issued over the hand of its Chief Executive Officer.



Roy J. Doucette
Chief Executive Officer

PANEL:

Aidan Sheridan, Vice-Chairman
Ted Crockett, Member
Harry Snow, Member