



GOVERNMENT OF PRINCE EDWARD ISLAND  
LABOUR RELATIONS BOARD

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Roy J. Doucette  
Chief Executive Officer

DEPARTMENT OF LABOUR  
P.O. BOX 2000  
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DECISION

RE: APPLICATION FOR CERTIFICATION  
BETWEEN: P.E.I. UNION OF PUBLIC SECTOR EMPLOYEES APPLICANT  
AND: THE CHARLOTTETOWN DRIVING PARK AND PROVINCIAL EXHIBITION ASSOCIATION RESPONDENT

A hearing was held on May 13, 1989 to hear the Application for Certification filed in this matter, which was received by this Board on March 17, 1989. The Board has reviewed the Application for Certification and accompanying documentation and is satisfied that all the documentation required to be filed pursuant to Section 3 (2) of the Regulations to the Labour Act have been filed and that the Application is properly before the Board, thus giving the Labour Relations Board the jurisdiction to rule on this matter.

Section 12 (1) of the Labour Act provides:

"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."

Thus, the issue at hand is to determine if the unit proposed for certification is appropriate for collective bargaining. Prior to embarking on this task, the Board became satisfied that the Applicant meets the definition of trade union as defined in the Labour Act. The documentation filed establishes that the applicant union is a body corporate, duly constituted under the laws of Prince Edward Island and has the power to organize and represent employees, whether they be in the public or private sector. With this matter resolved, the Board's attention was drawn to determining the appropriateness of the claimed unit.

The Application for Certification requested that the union be certified for "All employees of the employer employed as permanent or temporary full time in secretarial, clerical, maintenance, printing, house-keeping, custodial, race starter, classifier, clerk of course and race announcer positions; excluding those employees who are employed in any part-time capacity from time to time and the General Manager."

The employer, in its reply, requested that certain positions be excluded; namely, secretaries, print shop manager, maintenance foreman, clerk of the course and starter-classifier. Submissions and evidence were heard from both parties in regard to this aspect of the Application, and the Board has ruled that all of the positions that were unchallenged by the Respondent form an appropriate unit for collective bargaining. In addition, the Board considered which, if any, of the challenged positions should be included in such a unit. The challenged positions were considered individually, based upon the evidence presented to the Board; and the following determinations have been made:

With respect to the two (2) secretarial positions, the Board heard evidence that the two positions are essentially interchangeable in that neither position has defined responsibilities and that either individual is expected and is capable to perform any secretarial task required by management. Such tasks could well include exposure to or access to confidential information "in matters relating to labour relations." Either position could be asked to take minutes of Board of Directors meetings at which labour matters may be discussed; both positions have access to filing space which could contain such confidential information. In fact the union acknowledged that one secretarial position could well be excluded but did not feel that both should be excluded.

The Board has determined that both secretarial positions should be excluded from the bargaining unit, as it would not be appropriate to include these positions due to the confidential matters to which these positions are exposed. The Board has heard evidence (uncontradicted) that each position is interchangeable. For this reason, and due to the fact that the Board is not desirous of causing an artificial split of the two positions, the Board rules that the secretarial positions, described by the Employer (in his reply) as "Admin. Secretary/Accounting" are to be excluded from the bargaining unit.

With respect to the position of maintenance foreman, the Board is satisfied from the evidence as tendered that this position does not involve any managerial function and that the position could be better described as "lead hand" re maintenance; thus the Board rules that this position is to be included in the appropriate unit.

With respect to the position described as Print Shop Manager, the Board heard evidence that clearly shows that the individual in this position is clearly responsible for the day-to-day operations of the printing shop. However, the evidence fell short of establishing that this position has managerial functions. No doubt this position calls for great skills, but the skills required are more in the nature of printing than in the nature of management. The evidence discloses that the print shop manager is answerable to the General Manager for the vast majority, if not all, of the management decisions. The print shop manager has no power to hire staff (although he may recognize the need for additional personnel and make recommendations), has no power to dictate the business course of the operation, has no power to set wages (although he may provide informational input), and has no real decision making power other than normally expected of a "lead hand" in the day-to-day operation of the print facility. Therefore the Board rules that this position is appropriate for inclusion in the unit for collective bargaining.

With respect to the clerk of the course and the starter-classifier positions, it should be noted that these positions gave considerable problems to the Board. The Board was not pleased with the extent of the information provided by both parties regarding these two (2) positions but nonetheless feels it has sufficient information to decide this matter. The Board will deal with these positions collectively as there are many similarities evident.

In determining the appropriateness of a bargaining unit, one of the main issues, if not the major issue, is whether the employees share a community of interest. A long line of precedents have set up tests regarding community of interest, and this is illustrated in the text Ontario Labour Relations Board Law and Practice (Sack & Mitchell), 1985 Butterworth & Co. (Canada) Ltd., at pp 140 and 141 where the following quotation is found:

"The tests used to determine community of interest among different employees (and among employees at different locations) are set out in Usarco Ltd. and include:

1. nature of work performed;
2. conditions of employment;
3. skills of employees;
4. administration
5. geographic circumstances;
6. functional coherence and interdependence.

The Board has said that the criterion of community of interest is the primary consideration in determining whether a unit is viable, but that, of the factors set out in the *Uscaro* case, no one factor is given undue significance and all must be considered."

When we look at the case at hand in light of the above comments, it becomes obvious that the positions of clerk of the course and starter-classifier do not have a sufficient community of interest to justify inclusion in the bargaining unit. Although these two positions do share office space with other office related employees and although they are both paid directly by the Employer, there are significant differences nonetheless. First of all, although both positions are paid fully and directly by the Employer, evidence was provided that at least one position has a base salary prescribed by a third party. This, in itself, is not a key factor but when considered with other factors, is useful in determining the lack of community of interest.

Secondly, although the evidence discloses that, in a vacancy situation, the Employer is free to hire any qualified person for these positions, the Employer does not have the unrestricted freedom to discipline or fire with respect to these positions. The evidence indicated that the ultimate decision making authority re firings and discipline for these positions rested with a third party, totally independent of the Employer. Although the employer may request/recommend discipline or firings, the ultimate authority for such action is not vested in the Employer. This would seemingly place these positions outside the normal employer/employee relationship and evidences the lack of community of interest.

Thirdly, and most significant in this matter, is the fact that the allegiance of these positions is not directed primarily towards the Employer. The evidence disclosed that these positions were created so as to ensure the integrity of the harness racing industry on Prince Edward Island as it interfaces with the Charlottetown Driving Park. This appears to be the primary reason why a third party retains control over these positions and why these positions are primarily answerable to the third party as opposed to being answerable to the Employer. Obviously the other employees in the unit are answerable primarily to the Employer; thus their duties are directed by the Employer in the best interests of the Employer. However, in order to ensure the integrity of the harness racing industry, these two positions must retain a functional independence from the Employer; and should a decision arise that would pit the best interests of the Employer against the best interests of the industry, these two positions would necessarily have to chose the latter despite the possible consequences to the Employer.

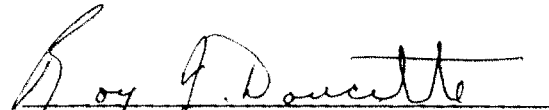
Thus the Board has ruled that for the reasons as outlined above, the positions of clerk of the course and starter-classifier are not appropriate for inclusion in the unit.

With the above rulings in mind and with the appropriate bargaining unit defined, the Board then directed its attention to the membership evidence as filed by the Applicant. The Board was satisfied that this evidence complied with the Labour Act and was further satisfied that this evidence established that a majority of those employees presently in the positions within the appropriate bargaining unit wish the Applicant union to be certified as their bargaining agent.

In light of the foregoing, the Board does hereby order that a Certification Order be issued in favor of the Applicant union to certify this union as bargaining agent for the unit described as follows:

"All employees of the Charlottetown Driving Park and Provincial Exhibition Association employed as permanent or temporary full time in clerical, maintenance (including the position designated as maintenance foreman), printing (including the position designated as print shop manager), housekeeping, custodial, race announcer, and promotions-advertising; excluding those employees who are employed in any part-time capacity from time to time, the General Manager and all other exclusions prescribed by the Labour Act."

THIS DECISION made by the Prince Edward Island Labour Relations Board on May 23, 1989 and issued under the hand of its Chief Executive Officer.



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Roy J. Doucette  
Chief Executive Officer

PANEL:

Aidan Sheridan, Vice-Chairman  
Ray McBride, Member  
Lloyd Weeks, Member