



**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

**RE: APPLICATION FOR CERTIFICATION**  
**BETWEEN: PRINCE EDWARD ISLAND NURSES' UNION APPLICANT**  
**AND: SACRED HEART HOME RESPONDENT**

**D E C I S I O N**

**COUNSEL FOR THE APPLICANT: ROSEMARY SCOTT**  
**COUNSEL FOR THE RESPONDENT: PAUL J.D. MULLIN, Q.C.**

This Application was filed on May 29, 1989. A hearing to consider the Application was held on January 24 and 25, 1990.

The Applicant has applied for certification for a bargaining unit of registered nurses employed as nursing supervisors at the Sacred Heart Home, a seniors' residential care facility in Charlottetown.

1. The Board is satisfied that the P.E.I. Nurses' Union is a trade union as defined by the Act and that it is and has been engaged in the normal activities of a trade union for several years.

2. The Board has examined the bargaining unit that is deemed by the Applicant to be appropriate. The nursing supervisors are registered nurses who are in charge of specific resident care units within the Home. These nurses have overall supervision of the work of resident care workers, orderlies and licensed nursing assistants and are themselves responsible for providing direct nursing care to patients. Evidence was provided that bargaining units comprised of registered nurses with similar responsibilities have been certified in this province, with resulting collective agreements.

The Respondent has argued that certain of the functions performed by the nursing supervisors are managerial in nature and that these positions should be excluded from any bargaining unit as an exclusion under Section 7 (2) (b) of the Act.

Evidence at the hearing has convinced the Board that, while the nursing supervisors do exercise significant supervisory responsibility, these are the normal responsibilities which are expected of nurses in both hospital and nursing home environments. Evidence was presented to show that the nursing supervisors are consulted by management, particularly the Director of Nursing, to whom they report, and that their opinions are given significant consideration. Further, the nursing supervisors have been involved in recent months in the formal evaluation of their staff, as the employer has initiated a more comprehensive evaluation process.

In the opinion of the Board, neither the consultative and advisory roles nor the evaluation process, separately or together, is sufficient to define these functions as managerial as intended by Section 7 (2) (b).

The Board takes particular note of the decision of the Ontario Labour Relations Board in Ontario Nurses' Association v. Oakwood Park Lodge, CLLC82, Par. 16,153. In that decision, the Board held:

"The Board must have regard to the nature of the industry, the nature of the particular business and the individual employer's organizational scheme. The Board applied the "effective recommendation test" and held that while the nurses did exercise supervisory and professional responsibilities they did not exercise significant influence over the livelihood or economic destiny of co-workers. The nurses did not exercise managerial functions."

It is apparent to the Board that the "nursing supervisor" position at the Sacred Heart Home is very similar to the positions described in that case.

The Board decides, therefore, that an appropriate bargaining unit will be described as comprised of registered nurses employed as Nursing Supervisors at the Sacred Heart Home, excluding the Director of Nursing and the Staff Development Co-ordinator. The Board also determines that the new position of Associate Director of Nursing will similarly be excluded.

3. The Respondent has further argued that Section 15.08 of the By-laws of the Applicant Nurses' Union is such as to prevent that Union from entering into collective bargaining with the employer. Section 15.08 reads:

**"c) Negotiating Committee:**

There shall be a Negotiating Committee for each bargaining unit comprising the Union. These units are --1) Nurses in hospitals and nurses in the School of Nursing, and 2) Nurses in Addiction Services."

The Applicant contends that Section 15.08 was designed to be descriptive of the bargaining units that were in existence in October, 1988, the last revision of the By-laws, and that Section 15.08 should be read in conjunction with Article 2.01 (a) of the Constitution -- Objectives and Article 2.01 of the By-laws - Membership:

**Objectives:**

"2.01 (a) Regulating employment relations between nurses and their employers through collective bargaining and negotiation of written contracts with employers implementing progressively better conditions of employment."

**Membership:**

"2.01 All registered nurses who are eligible to engage in collective bargaining are eligible for membership in the Union."

Counsel for the Applicant also refers to Motion No. 4 of the Board of Directors' Meeting of the Nurses' Union which was held on February 9, 1989. Motion No. 4 of that meeting reads:

"MOTION # 4/MSC: (Alexina MacLean/Joan Arsenault)  
PEINU will proceed with application for certification for registered nurses at Sacred Heart Home."

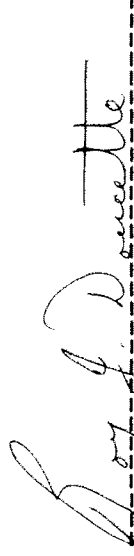
Counsel for the Applicant argues that when Section 15.08 is read with the above, it is clear that the intention of the Union is to organize and represent the registered nurses in such employment situations as would be deemed appropriate for it to do so, and therefore Section 15.08 should not be given an exclusive interpretation.

The Board agrees and is of the opinion that it should not be guided solely by Section 15.08. To do so would be to reject the clear purposes and objectives of the Nurses' Union and the equally clear intentions of its membership and Board of Directors. The Board, therefore, does not accept the argument that Section 15.08 of the By-laws is an impediment to this application.

4. The Board has reviewed the membership evidence that was filed with the Application and is satisfied that the employees in an appropriate bargaining unit as described above are eligible for membership in the Applicant Union and that a majority of those employees wish to be represented by the Applicant Union.

It is the decision of the Board that the application for certification is approved and that a certification order will be issued.

THIS DECISION was made by the Prince Edward Island Labour Relations Board on January 31, 1990 and issued under the hand of its Chief Executive Officer.



Roy J. Doucette  
Chief Executive Officer

**PANEL:**

J. J. Revell, Vice-Chairman  
Judy Goodwin, Member  
Jean-Marc Gallant, Member