



**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 AMENDMENT OF CERTIFICATION ORDER
BETWEEN: CITY OF CHARLOTTETOWN APPLICANT
AND: CANADIAN UNION OF PUBLIC EMPLOYEES LOCAL 3041 RESPONDENT

D E C I S I O N

COUNSEL FOR THE APPLICANT - KAREN A. CAMPBELL
REPRESENTING THE RESPONDENT - KELLY MURRAY

This action was commenced by the Corporation of the City of Charlottetown (Applicant) by way of an Application for Amendment of a Certification Order filed with the Labour Relations Board on January 10, 1990. Local Union No. 3041, Canadian Union of Public Employees replied to the Application on January 26, 1990. This action revolved around the Applicant's request to have a position within the Charlottetown City Police removed from the bargaining unit. The Applicant alleged that the position of Police Steno involved duties which could possibly expose the employee to confidential information pertaining to labour relations matters.

At the hearing evidence was adduced from various sources including Chief of Police Donald Webster, several secretaries who work at City Hall, as well as the person who most recently filled the position of Police Steno prior to her resignation from this position for reasons completely unrelated to this action.

Of course the nature of this action dictated that the onus of proof was upon the applicant to establish that the position of Police Steno was not appropriate to remain within the bargaining unit. The applicant requested that the position be declared an excluded position pursuant to subsection 7 (2) (b) of the Labour Act, as the position entailed duties related to confidential information pertaining to labour relations matters. Section 7 (2) (b) of the Labour Act reads as follows:

"(2) For the purposes of this Part, no person shall be deemed to be an employee

(b) who in the opinion of the board, exercises managerial functions or is employed in matters relating to labour relations."

It should be noted at this stage that Chief Webster assumed his position in August of 1988 and that the period between his appointment and this action has been an extremely active period pertaining to labour matters, possibly the most active period in the history of the City Police. Chief Webster testified that on many occasions he needed confidential labour information either gathered or typed and had to rely upon several non-union secretaries within City Hall to assist him in this area. Chief Webster felt that these duties fell within the purview of the Police Steno position but chose not to delegate such duties to the Police Steno due to the fact that the position was a union position within the bargaining unit. Hence the problem and the rationale behind this application.

This matter was greatly complicated by the fact that there was no formal job description in existence defining the duties of the Police Steno. The Board accepted into evidence (as Respondent Exhibit 1) a description of the duties and responsibilities performed by the Police Steno position. The testimony from Wilma Smith (the former incumbent in the Police Steno position) disclosed that this document was drafted by herself for the purpose of outlining her duties to be compared with job descriptions for other positions, so that the level of pay for the position could be reviewed and adjusted. This document was presented to the former Chief of Police, signed and "Certified Correct" by the former Chief on December 14, 1987. It must be emphasized that the Board does not consider this as a formal job description, as it was not prepared as such within the scope of the Collective Agreement. Also it should be noted that this description of duties was a reflection of the duties that were performed by the Police Steno, not a description of the duties expected of the position. Although it is not a formal job description, this document was influential in this matter, as it was a "certified correct" statement of the duties of the Police Steno.

The information within this document was further elaborated upon by the viva voce evidence of Wilma Smith at the hearing. Mrs. Smith testified that a larger part of her working time was dominated by the routine filing of the approximately 15,000 police reports written per year. Mrs. Smith testified that, although Chief Webster was her direct supervisor, her position involved working with many, if not all, of the police officers. Mrs. Smith also indicated that she was aware that Chief Webster was getting confidential work done by other secretaries and that he was not satisfied with Mrs. Smith's "job description".

The Board took particular note of Chief Webster's testimony, which was as frank and forthright as one would expect from a policeman of Chief Webster's stature and experience. He indicated that when he assumed the position of Police Chief he assumed he would have an "assistant" or a "right-hand person". He also indicated his need for someone to assist him in labour matters, not only in regard to typing matters but also in attending meetings, taking minutes and in gathering information from various sources to be used either in collective bargaining or in other labour matters. Chief Webster acknowledged that at this time the Police Steno performed no duties of a confidential nature; but this was due to his reluctance to assign such duties (due to the fact that the Police Steno position was within the bargaining unit), rather than a feeling that such duties were not to be performed by the Police Steno. Chief Webster testified that his vision was that the Police Steno position (if removed from the bargaining unit) would evolve into an assistant position for himself. Chief Webster used such terms as "assistant" and "executive assistant".

With this background the Board was faced with the task of deciding whether the application should succeed. Again the Board remained mindful of the fact that the onus of proving that the position should be excluded from the bargaining unit fell squarely upon the applicant. This Board has unanimously concluded that the applicant has not satisfied this onus. The Board has recognized that the duties traditionally performed by the Police Steno entail much more than work directly or indirectly related to the Chief of Police. These involve both clerical and secretarial duties as well as duties best described as quasi-police in nature. In fact very little time in a normal work week is spent in action specifically related to the Chief of Police. It must be stressed that the position is NOT classified as secretary to Police Chief or even anything closely resembling this terminology.

Evidence indicated that the Police Steno worked with the Police Department in general and was not specifically allocated to the Chief of Police. This Board does not dispute the feelings expressed by Chief Webster when he expressed a desire and need for an assistant; however, this Board cannot agree with the applicant that, in order to achieve this, the position of Police Steno must be removed from the recognized bargaining unit. In reaching this decision, the Board was mindful of the fact that the organizational chart of the City Police Force (accepted into evidence at the hearing) indicates that Chief Webster has at his disposal two Deputy Chiefs, one for operations and one for administration. It is the Board's feeling that some of Chief Webster's legitimate desire/need for an Assistant would best be served by assigning such duties, especially regarding labour matters, to one or both of his deputies. These two positions are outside of the

bargaining unit, and the Board feels it would be only logical for Chief Webster to trust such delicate and important matters to a deputy as opposed to a Police Steno.

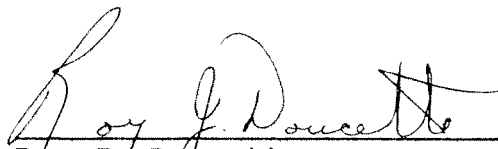
Of course the above solution would not solve Chief Webster's problem in getting confidential labour matters typed, but the Board was not convinced that there was sufficient typing necessary to justify the removal of a position from the bargaining unit. Once again the Board recognizes the legitimate need for Chief Webster to have access to typing services for confidential labour matters; but the Board feels this is a matter which must be addressed by City Council and/or City Hall, as it is a strictly internal matter and is not a matter which would permit the Board to remove a position from an existing bargaining unit, as it is felt there is not sufficient work of this nature to justify such a drastic measure.

Therefore, for all of the above reasons, this Board finds that the Applicant has not satisfied its burden of proof to establish that the position of Police Steno should be removed from the bargaining unit as it is employment in a confidential capacity with respect to matters relating to labour relations as set out in subsection 7 (2) (b) of the Labour Act. Therefore this application is dismissed.

It should be noted that the Respondent raised in arguments an objection relating to timeliness which gave rise to the exchange of post-hearing briefs. As this application was dismissed, the Board does not feel it necessary to rule on this subject although it does wish to thank both counsel for their efforts in filing briefs for the assistance of the Board.

The Board rules that a copy of this decision be served on each counsel who appeared before the Board.

THIS DECISION was made by the Prince Edward Island Labour Relations Board on June 14, 1990 and issued under the hand of its Chief Executive Officer.



Roy J. Doucette
Chief Executive Officer

PANEL:

Aidan Sheridan, Vice-Chairman
Ray McBride
Gerald Doyle