File No. 95-047

Decision No.

IN THE MATTER OF AN APPLICATION FOR CERTIFICATION

BETWEEN:

UNITED FOOD AND COMMERCIAL WORKERS UNION, LOCAL 864

APPLICANT

AND:

MARRIOTT CORPORATION OF CANADA LTD.

RESPONDENT

Counsel for the Applicant: **Patrick Aylward, Esq.**
Counsel for the Respondent: **John R.A. Douglas, Q.C.**

D E C I S I O N

BACKGROUND

On March 24, 1995 the Applicant herein, United Food and Commercial Workers Union, Local 864, filed with the Prince Edward Island Labour Relations Board an Application for Certification for Marriott Canadian Management Services Ltd.

By letter dated April 13, 1995, Mr. John R.A. Douglas, Q.C., (Counsel for Marriott Corporation of Canada Ltd.) advised the Board that Tony Goodwin, who was served with the Application is not employed for any company known as "Marriott Canadian Management Services Ltd."

On May 10, 1995, Mr. Patrick Aylward (Counsel for the Applicant) wrote to the Board requesting an Amendment to the Application to correct the name to Marriott Corporation of Canada Ltd. and also set out the basis for the Amendment.

A Panel of the Labour Relations Board consisting of George Lyle, Chair, Elizabeth MacFadyen, Employee Representative, and Jean-Marc Gallant, Employer Representative met on June 14, 1995 to consider Counsel for the Applicant's request to amend its Application and the Board after review of the written briefs on the matter granted the request by Order dated the same day.

On June 29, 1995 the Respondent, Marriott Corporation of Canada Ltd., in addition to filing its Reply, also filed a Notice of Intervention which stated that "the Board was without jurisdiction because proper notice of the Application was not given to the Respondent's employees."

The Notice of Intervention also requested a pre-hearing representation vote, and stated reasons as to why the Respondent felt that the description of the unit claimed by the Applicant was not an appropriate unit for collective bargaining. It also stated the Applicant did not represent a majority of the Employees and requested a hearing.

LAW AND DECISION

On the request by the Applicant to Amend the Application, Counsel for the Applicant submitted that the incorrect label or name of the Respondent employer was a misnomer and was only technical in nature. Furthermore, the Applicant's Counsel suggested that the misnomer of the Respondent employer was induced by the Marriott Corporation of Canada Ltd., itself through materials supplied to its employees when hired. Particular reference was made to the description in the handbook supplied to the employees as to the style and design of the pay cheque stub which sets out the payor as "Marriott Canadian Mgt. Services Ltd."

Counsel for the Marriott Corporation of Canada Ltd. (hereinafter referred to as "Marriott") submitted that the error was not technical in nature but substantive and as a result the application to amend the application should be refused.

Counsel for Marriott drew the Board's attention to a test as explained in the United Association of Journeyman and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, Local Union 46 v. Pioneer Mechanical Limited (1989) OLRB March 27, which suggests that the Board's power to amend is limited to situations where the mistake is a minor one, "a mere technicality and not a matter of substance." The Board takes a view that the error was technical in nature, that the use of the word Marriott on the application was sufficient to direct the attention of the Applicant and the employees to the proper Respondent, and that the Marriott Corporation of Canada Ltd. would not be prejudiced in any way by this amendment. Counsel for Marriott suggested "that the employer would suffer prejudice by the fact that the appropriate bargaining unit of its employees is unidentifiable." Counsel drew the Board's attention to the B.C. decision of Afca Investments Ltd. v. United Brotherhood of Carpenters and Joiners of America, Local 27 B.C.L.R.B. (No. 320/84) and, in particular, the quote at page 5:

> *"in our view, in general terms, the identity of the employer of the employees in a proposed unit is relevant to the identity of the unit itself and thus a substantive issue in an application for certification."*

However, it is the Board's view that this B.C. decision can be distinguished from the matter before the Board in that the B.C. decision was based upon two separate legal entities. The first company being a separate legal entity without any connection to the second legal entity other than as a sub-contract employer. In the situation at hand, we do not have the situation of two employers. We have a situation where an employer was misnamed, both names having a common element of "Marriott". Marriott's solicitor even points out in his arguments that the Respondent in the application is not a legal entity in this jurisdiction. It was the Board's finding that there would be no confusion identifying who, in fact, is the employer.

Counsel for Marriott further suggested that the application of the Applicant was carelessly prepared and that as a result of this carelessness, an amendment should be not allowed. Counsel put forward in support of this argument a decision of the Ontario Labour Relations Board in the matter of Labourers' International Union of North America Local 506 v. Ontario Plastering Contractors and Sergio Bartozzi (1968) OLRB April 75. That decision was totally based upon the finding of the Board that there was sufficient lack of care in the preparation of the application. Therefore, the amendment was not allowed. However, in this application, it would appear from the documents submitted to the Board by the Applicant that the source of information used by the Applicant was material provided to the Applicant by the Marriott Corporation of Canada Ltd. through its employees. In particular, within the handbook, is an example of the pay stub that the employees should expect to receive identifying the payor as "Marriott Canadian Mgt. Services Ltd." This is the same name used on the application as the employer Respondent. Therefore, the Board is not of the opinion that the application was prepared carelessly.

The Board was of the opinion and was satisfied that the mistake was a bona fide mistake, technical in nature, and that the application should be amended pursuant to its power as set out in Section 26 of the Regulations of the Act so as to correctly name the employer Respondent as the Marriott Corporation of Canada Ltd., and this was reflected in the Board Order issued June 14, 1995.

The Board is of the opinion that since the changing of the name of the employer Respondent, was technical in nature, that the notices as required by the Act to the employees were proper and that the employees of the Respondent did, in fact, receive proper notice of the application.

Following the investigation and consideration of the application as amended, and upon the submission of the parties concerned, the Board has found the Applicant to be a trade union within the meaning of the Prince Edward Island Labour Act. It also has determined the unit described hereunder to be appropriate for collective bargaining, and has satisfied itself that on the date of the original Application (March 24, 1995) and on the date of the Amended Application (May 10, 1995) a majority of employees wished the Applicant trade union to be certified as a bargaining agent on their behalf. The Board did not find any reasons as to why a pre-hearing representation vote should be held.

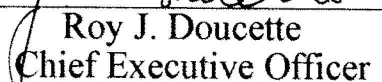
It was, therefore, ordered that the Applicant be certified as the bargaining agent for all employees of the Respondent as set out in the application.

George Lyle
Chair

Elizabeth MacEadyen, Member

Jean-Marc Gallant, Member

THIS DECISION made by the Labour Relations Board on this 2nd day of October 1995 and issued under the hand of its Chief Executive Officer.



Roy J. Doucette
Chief Executive Officer