



File No.

Decision No. 95-064

**IN THE MATTER OF THE UNFAIR LABOUR PRACTICE COMPLAINT**

**BETWEEN:**

**ELIZABETH HORNE**

**COMPLAINANT**

**AND:**

**PERRIN'S CLINTON VIEW LODGE LTD.**

**RESPONDENT**

**Counsel for the Complainant:**

**Paul Mullin**

**Counsel for the Respondent:**

**Donna MacEwen**

**DECISION**

**BACKGROUND**

The Complainant complained that the Respondent has violated Section 10, paragraph 1(c) of the Labour Act, R.S.P.E.I. 1988 Cap. L-1 by suspending and discharging the Complainant without cause or justification.

The employer, Perrin's Clinton View Lodge Ltd., provides residential care for seniors who are capable of looking after themselves as well as for those seniors who are bedridden and unable to care for themselves. The Lodge is located at Clinton, in Queens County, Province of Prince Edward Island. It was established for residential care in the mid 80's. It was acquired by its present owners, John and Geraldine Perrin, in September of 1987.

Mrs. Perrin testified that she is a registered nurse licensed in the Province of Newfoundland and, since December 6, 1995, in the Province of Prince Edward Island. Mrs. Perrin indicated that she has been a registered nurse for over 20 years and acted on several occasions as a head nurse. She further advised the Board that they operate a similar establishment in the Province of Newfoundland. She also testified that neither residential care establishments are unionized. Mrs. Perrin indicated that they made 5 additions to the Clinton View Lodge over their period of ownership. She further advised the Board that the chief executive officer and administrator of the Clinton View Lodge, up until September 1995, was Shelley MacEwen. Mrs. MacEwen was dismissed in September of 1995 and Mrs. Perrin assumed her duties.

Mrs. Perrin testified that during July of 1995, she became aware, as a result of an inspection that took place by her son-in-law, that there were problems at the Clinton View Lodge, particularly in the manner in which Shelley MacEwen was managing the Lodge and the interaction and behavioural patterns between Ms. MacEwen and the staff and residents. Mrs. Perrin indicated that she and her husband decided that, based upon this report, they needed to be here, and planned to take up full time residence sometime in the fall of 1995.

Ms. Sharon Chisholm and Sherry Cole, on the 2nd day of September, 1995, arranged to meet with a representative of the National Automobile Aerospace Transportation and General Workers Union of Canada (CAW-Canada) raising the possibility of unionizing the work force at the Clinton View Lodge. Subsequent to this meeting, Sharon Chisholm, with the assistance of Elizabeth Horne, arranged to have several of the employees of the Clinton View Lodge, take out membership in the Union. Coinciding with this activity of Sharon Chisholm, Mrs. Perrin testified that she received a call from Shelley MacEwen to the effect that some of the girls wanted a meeting with Mrs. Perrin. (Mrs. Perrin also testified that she received a call from Sherry Cole requesting a staff meeting. As a result of these two calls, Mrs. Perrin came to Prince Edward Island and held a meeting on September 5th in a mobile home located on the grounds of the Clinton View Lodge. She testified that there were five employees at that meeting.

As a result of that meeting Mrs. Perrin suspended Shelley MacEwen and assumed the responsibilities of the day to day operation of the lodge. Subsequent to Ms. MacEwen's suspension she was dismissed from employment.

It was Mrs. Perrin's evidence that she did not become aware of the unionization attempt until after the meeting took place between herself and the staff members. She indicated that it was Shelley MacEwen who told her about the union activity but Mrs. MacEwen was not aware who was involved. Mrs. Perrin stated that she received the Notice of Application for Certification on October 10, 1995 with instructions to post it in the workplace.

Mrs. Perrin gave evidence that on her arrival at the lodge on the first of September she encountered fighting and bickering among the staff and she stated that she attempted to improve the situation by providing to the staff an immediate raise of 3% affective the first of September, 1995. This raise was promised earlier. Mrs. Perrin also suggested regular monthly meetings the first of which was to be held on October 19. Mrs. Perrin also took over as the Director of Administration and promoted Pam Handrahan to the position of Director of Nursing.

An issue was raised that Sherry Cole was given a promotion, however it is well settled by the evidence provided that the promotion was granted in August by Pam Handrahan and prior to any union activity.

There was no evidence of other major changes made by Mrs. Perrin on the assumption of her duties as the Director of Administration. There is no evidence that Mrs. Perrin was aware of union activity until after she assumed the office of Director of Administration. It was Mrs. Perrin's evidence that the raise in salary was immediately given as a result of the meeting with the staff on September 5 and before she had knowledge of the union activity. There had been a promise of a raise in the summer of 1995 by Ms. MacEwen which hadn't been kept. It would also appear from the evidence that Mrs. Perrin did not actively involve herself in the administration of the lodge and in particular did not address the question of unionization until after she had received the notice of the application of the union for certification on October 10, 1995. The evidence is very clear that she left in September to go to Newfoundland and return to the lodge on the 5th of October. That subsequent to receiving the Notice of the Application of the union to be certified as the bargaining agent she organized several meetings with employees' in the lunch room at which she suggested that if the union was successful this would be the last chance that the employees' would have to speak for themselves and that the company would not be in a position to pay wages similar to those in a provincial manor.

During the period of time, from September to October 10, there appeared to develop an anti-union movement amongst some employees' led by Sherry Cole. Shortly after the application was posted Sherry Cole circulated a petition (Exhibit A1) and was successful in obtaining signatures of staff members, some of whom had become members of the union.

It would appear from all the evidence given that there was tremendous acrimony between factions of the employees, whether they be union or anti-union and in the words of Mrs. Aubut "there were a lot of catty girls."

The only evidence that was lead to suggest that Mrs. Perrin involved herself in anti-union activity was (1) she had a staff meeting immediately following the receipt of the notice of the application by the union and (2) the memorandum subsequent to the October 19 staff meeting (see Exhibit R1). All the other activities being complained of by the employees in their evidence is against each other in their separate factions, whether they be for or against the union. The only exception was an incident that arose in the lunch room subsequent to Ms. Horne's suspension.

According to Mrs. Gamester's evidence, Mary Paynter said "got rid of one, it will be all over by the end of the week." Mrs. Gamester suggested that Mrs. Perrin was indifferent to that comment and her indifference could lead one to believe that the comment had her tacit approval.

On November 5, 1995 it was reported to Mrs. Perrin that Elizabeth Horne was questioning the fact that Mrs. Perrin was not licensed as a registered nurse in Prince Edward Island and according to Mrs. Perrin's evidence it was suggested that Ms. Horne was going to report her to the Division of Aging. Mrs. Perrin, that morning, called in Elizabeth Horne in the presence of Sherry Neil and John Perrin and questioned Ms. Horne on the matter. Mrs. Perrin stated that Ms. Horne did not deny questioning the fact of her not being licensed in Prince Edward Island and discussing the subject amongst the staff members, but she did deny threatening to take the information to the Division of Aging and The Nurse's Association.

Mrs. Perrin then asked Ms. Horne to leave the meeting while she further investigated the matter. Ms. Horne left the meeting and returned to her duties. Several hours later she was approached by Mrs. Perrin, advised that she was suspended and asked to leave the building. Ms. Horne then received on November 7, delivered by hand, a letter (Exhibit R3) which advised her that as a result of Mrs. Perrin's investigation Ms. Horne's employment with the lodge was terminated, effective November 5, 1995. This termination of employment is the matter which is being addressed by this Board.

### **THE LAW**

The burden of proof is on the employer in any complaint alleging that a person was discharged contrary to the Act with respect to his or her employment. The complainant need not establish a prima facie case before the employer is called upon to satisfy the Board that it has not contravened the act. Therefore, the employer must establish, on the balance of probabilities, that the dismissal was not motivated by an anti-union animus, but solely for justifiable business reasons or just cause.

The effect of the shift in the burden of proof causes the employer to satisfy the Board that, in acting as it did, it was not motivated by anti-union animus.

The Ontario Labour Relations Board stated in the Barrie Examiner case (1975) O.L.R.B. Rep. Oct. 745.

"Given the requirement that there be absolutely no anti-union motivation, the effect of the reversal of the onus of proof is to require the employer to establish two fundamental facts - first, that the reasons given for the discharge are the only ones and, second, that these reasons are not tainted by any anti-union motive. both elements must be established on the balance of probabilities in order for the employer to establish that no violation of the Act has occurred."

The employer must establish that its actions were devoid of any anti-union animus.

The Ontario Labour Relations Board stated in The Pop Shoppe (Toronto) Ltd. (1976 O.L.R.B. Rep. June 299)

"The Labour Relations Act places the legal burden upon the employer in complaints such as the one before us, to satisfy the Board, on the balance of probabilities, that it has not violated the Act. In order for the Board to find that there has been no violation of the Act it must be satisfied that the employers' actions were not in any way motivated by anti-union sentiment; the employers' actions must be devoid of "anti-union animus." The employer cannot engage in anti-union activity under the guise of just cause or under the guise of business reasons. Regardless of the viable non-union reason which exists, the Board must be satisfied that there does not co-exist in the mind of the employer an anti-union motive. The employer best satisfies the Board in this regard by coming forth with a credible explanation for the impugned activity which is free of anti-union motive and which the evidence establishes to be the only reason for its conduct."

It is the Boards' interpretation that the employer should give a credible explanation for its conduct which is free of anti-union motive and which the evidence shows is the sole reason for discharge. The question is not whether the reason given for the discharge is sufficient, but whether it is the true reason devoid of anti-union animus.

Mrs. Perrin put forward in her evidence that it was reported to her by her husband that an employee advised him that Ms. Horne was commenting about the fact that Mrs. Perrin was not a registered nurse in the Province of Prince Edward Island and as such should not be assuming the duties of a nurse. Mrs. Perrin was led to believe, in that report from her husband, that Ms. Horne was going to report the situation to the licensing body for nursing homes. Based upon that report Mrs. Perrin asked Elizabeth Horne to attend at the main office on the morning of November 5. Ms. Horne did attend at the office in the presence of Mr. and Mrs. Perrin and Sherry Neil. At that meeting Ms. Horne did admit making comments on the nursing status of Mrs. Perrin in the Prince Edward Island jurisdiction to other employees. However, she denied that she threatened to take the information to the licensing body. At the conclusion of the meeting Ms. Horne was asked to leave and return to work.

Pearl Aubut who was doing a cross shift with Elizabeth Horne was the party who reported the incident to Mr. Perrin. She testified that on Saturday, the 5th of November, at 7:30 in the morning, a discussion took place between she and Elizabeth Horne in the coffee room whereby Ms. Horne observed that it was not right for Mrs. Perrin to be on the floor as a licensed nurse as she was not a licensed nurse in the Province of Prince Edward Island. In the discussion, Mrs. Aubut advised Ms. Horne that if she did not cease in making comments that were disrespectful to her employer that she was going to lose her job. Mrs. Aubut advises that Ms. Horne's response was "I don't give a f---."

Mrs. Aubut testified that Elizabeth Horne kept on talking about Mrs. Perrin. Later in the morning, on November 5, Mrs. Aubut spoke to Carol Reeves about Elizabeth Horne's comment. Carol Reeves advised Mrs. Aubut that Elizabeth Horne was suspended. Since this was one of several incidents between Elizabeth Horne and Pearl Aubut, Mrs. Aubut thought it was necessary to speak to Mrs. Perrin about the other incidents.

In a very emotional but very credible manner, Mrs. Aubut gave evidence to the Board that about 6 weeks prior to November 5, 1995, while attending a resident, Stanley Brown, Elizabeth Horne became upset while trying to put him into bed and called him a stupid old f--k--. The Board was advised that Stanley Brown was deaf and could not hear the comment.

Mrs. Aubut stated that several weeks later when Ms. Horne was attending another resident, Elmer Mann, Mr. Mann fell and was on top of Ms. Elizabeth Horne. Elmer Mann's physical condition was such that it required two people to assist him to negotiate, however, Elizabeth Horne had taken it on herself to do it alone. Mrs. Aubut, while assisting Elizabeth Horne to get Mr. Mann off her, overheard Elizabeth say "F---! Stand up, Elmer, stand up!" Mrs. Aubut felt that both of these comments were very disrespectful to the residents and was over the line for resident care and totally inappropriate. However, she advised the Board that she did nothing until the morning of November 5, when in addition to hearing the disrespectful comments about Mrs. Perrin, she was told about the incident that Elizabeth Horne had with Elva Mallett, discussed in the next paragraph.

Lisa Waite, who is a member of the union, after learning about Elizabeth Horne's suspension, wrote a memorandum to Geraldine Perrin and John Perrin, (Exhibit R2 tab-3 page 10 - 13). It related the incident that took place between Ms. Horne and Elva Mallett. This memorandum was delivered to Mrs. Perrin at the end of her shift, 7:00 p.m., November 5. Elva Mallett, a resident, while in the care of Lisa Waite, decided that she needed to use the washroom, to quote:

"I put her in her wheelchair and took her to the tub room. While I was taking her, Elizabeth came to help "I thought." Elva was growling but not a lot. We stood Elva up, put her on the toilet. While Elva was in her chair, Elizabeth said "You're not my f--k-- family so I'm not putting up with this from you, you old witch." While saying so she was pointing the finger at Elva. Elva said to Elizabeth, "Did you call me a bitch?" I cannot remember Elizabeth's comment in return. But in the hall she told Elva she was a mean old woman, after Elva told her she didn't have to be so mean. When Elva fell earlier, before going to the bathroom, Elizabeth was

snickering saying it looked funny. I admit it did, but that attitude was not necessary. I almost didn't report this due to these reasons:

- 1) I did not want her to do it to another resident;
- 2) If she's questioned on it she'll know I told, then she will try to get revenge on me;
- 3) She was tired of seeing her get away with the things that she had been doing."

The combination of the four incidents according to Mrs. Aubut was the motivation for her to go to Mrs. Perrin. Mrs. Aubut advised the Board that she did not take part in the organizing drive or the anti-union activities being conducted by Sherry Cole. She testified that she distanced herself from the activities of both factions. As stated earlier the Board finds the evidence of Mrs. Aubut to be very credible.

The evidence given by Mrs. Aubut on the attitude of Elizabeth Horne was reinforced by the evidence given by Sherry Neil, RN. Sherry Neil advised that Elizabeth Horne provided good physical care to the residents. However, Ms. Horne was very unhappy about the way things were run in the Lodge and had a very negative attitude towards her employers. Mrs. Neil, in her direct evidence, advised the Board that Ms. Horne spoke to her and speculated as to what the Registrar of Nurses and the Division of Aging would think of Mrs. Perrin not being a registered nurse when Mrs. Perrin is responsible for the passing of medication.

The board was advised of the fifth and final reason for her dismissal was the report of Ms. Horne's total disregard for the stated policy in the use of the hooyer lift. It would appear from the evidence lead (Exhibit R2, Tab 4, Page 5 and 6) that since June of 1992, it was the policy of the lodge that in the use of the hooyer lift two persons were to be present. This policy was restated and reinforced by a memorandum to the staff on August 31, 1995, by Pamela Handrahan, RN, Head Nurse, (Exhibit A6). The memorandum noted:

"two people to operate when lifting people into the air and letting them down." The memo continued "if you do not use two people and you get hurt or if



worse still, a resident gets hurt, the lodge will not support you. Also in regards to self injury compensation will not cover you. Your cooperation is expected for safety."

Ms. Horne in her evidence stated that she was aware of this policy and yet she acknowledged that she did in fact continue to use the hooyer lift by herself without the assistance of anybody else. This fact was reported to Mrs. Perrin during part of her investigation.

In response to the above allegations, with respect to her conduct towards the residents, Ms. Horne admits to the incident with Elva Mallett and the use of the word witch. However, she denies that she ever, on any occasion, using the word f--- or used it in a noun or an adverb form. Ms. Horne acknowledged that she discussed Mrs. Perrin's license qualifications with several employees, however, she denied threatening to repeat that fact to the Division of Aging.

It is noted in the affidavit of Ms. Horne accompanying the complaint, she referred to herself as "formally trained and qualified resident care worker". During the course of the hearing she allowed her counsel to continue to believe that she was a qualified resident care worker. It was subsequently discovered in the cross-examination of Ms. Horne that she was not in fact a qualified resident care worker. She did not suggest to the Board at any time in her oral evidence that she was a qualified resident care worker, however, by allowing her counsel to believe that fact as being true and by advancement in her affidavit puts in question her creditability. The Board has difficulty in accepting her denial of the use of foul language around the residents during the course of their care and in the face of Mrs. Aubut's direct evidence the Board is disinclined to put any weight on her denial.

Based upon the foregoing evidence, put forward by Mrs. Perrin, Mrs. Aubut, Sherry Neil, and Lisa Waite, the Board is of the opinion that Mrs. Perrin had substantial grounds to dismiss Elizabeth Horne. However, an examination must be made of the evidence put forward going to the question of an anti-union animus by the employer. The Board must find, as a fact, Mrs. Perrin was not motivated by any anti-union animus.

It was put forward by Counsel for Ms. Horne that there were fifteen activities that could allude to an anti-union motivation. The Board will address them individually.

- 1) Counsel suggested that there was an inference of anti-union motive arising as a result of the dismissal of Ms. MacEwen after September 6.

When Ms. MacEwen was dismissed, Mrs. Perrin was aware of the union activity. The Board is not of the belief that such an inference can be drawn as a result of this event. It is the belief of the Board that this event took place as a direct result of the meeting that Mrs. Perrin had with the staff on September 5, and that she was solely motivated by the protection of her investment in the operation of the nursing home.

- 2) Counsel suggested that Shelley MacEwen's notes on the inquiry made by Pam Handrahan to the Salvation Army Sunset Lodge Nursing Home at the time of Ms. Horne's application for employment draws an inference that the employer was definitely afraid of the union.

There is no evidence, either direct or indirectly, to attribute those written notes to Shelley MacEwen. The notes are "Shelley inquiring unionized, non-unionized." We have no direct evidence before us as to who this Shelley was or who made the note, or in what context this note was written. The Board is of the opinion that to conclude that the employer was definitely afraid of a union being formed from such cryptic notes is stretching the evidence too far.

- 3) That the Board should conclude that there was an anti-union motive by Mrs. Perrin when she gave a 3% raise to all employees on September 1, 1995. That it was a buy off.

The Board had evidence before it that there was some discussion of a raise in pay prior to the events leading up to September 1, and the matter was under consideration. The Board has no evidence before it that the raise was given by Mrs. Perrin after she became aware that there was union activity. The raise could be interpreted as an anti-union sentiment if it could be concluded that Mrs. Perrin was aware of the union activity prior to granting the raise. However, the Board is of the opinion that Mrs. Perrin was faced with a management problem and was not aware of union activity when the increase was given. This was her immediate attempt to settle one of the employees' complaints.

- 4) It was suggested that Mrs. Perrin's immediate order of supplies for the nursing home was evidence of anti-union motivation.

Again the Board is of the opinion that this event was motivated as result of the meeting that Mrs. Perrin had with the staff and was to correct a situation that had been allowed to deteriorate during the tenure of Ms. MacEwen. The ordering of supplies needed in the day to day operation of the nursing home

cannot infer an anti-union animus, but does suggest good management practice.

- (5) It was suggested that renovations to the building could provide an inference that the employer attempted to turn the union away.

The Board is unable to find any such inference within that statement since evidence was provided that there were ongoing renovations prior to union activity and renovations were continued.

- (6) Counsel suggested that the meetings that Mrs. Perrin had with staff members between October 10 and 11 in the staff lunch room subsequent to her receiving the notification of the union seeking certification could be inferred as an anti-union.

The Board is of the opinion that apart from the employers right to express its views the Act imposes a simple rule for the employer "do not interfere." In the Empro-Fab Limited hearing reported in (1982) O.L.R.B. Rep. August 1162, it is quoted:

"An employer can align himself neither with the employees who favour a union nor with those who are opposed. Doing so distorts the balance of choice and frustrates the free exercise of employees' rights under the Act. Support to either camp, whether open or covert amounts to interference contrary to the Act. While it may be impossible in the real world to expect employees to make their choice for or against a union in laboratory conditions unaffected by any outside influences, the Act strives, insofar as possible, to insulate the process by which employees select or reject union representation. Apart from the right to express his views, a right whose exercise requires some care. The Act imposes a simple rule for the employers "Do not interfere." That rule, it should be stressed, is generally accepted and observed by the vast majority of employers who appear before the Board in applications relating to the representations of their employees by a union."

The Board is of the opinion that Mrs. Perrin, at the staff meetings, did not attempt to interfere or coerce the employees with respect to their union

activity, but only attempted to express her views, a right that she has as an employer. There is nothing in the evidence before the Board to indicate that there was any attempt by Mrs. Perrin to discourage the formation of the union. All the anti-union activity according to the evidence before the Board would appear to be from the group of employees lead by Sherry Cole. There is nothing in the evidence to suggest that Mrs. Perrin encouraged Sherry Cole in her activities.

- 7) It was suggested by counsel that Lisa Waite's statement acknowledging that she was motivated to sign exhibit A1 by getting to know Mrs. Perrin and concluding that things were not as bad as when Shelley MacEwen was responsible for the administration could infer that Mrs. Perrin was attempting to turn employees against the union.

No evidence was led at the hearing of any particular event or events that happened which would cause Lisa Waite to change her mind. It could be concluded that the general climate in the work place had changed because of Mrs. Perrin's management style, not as a result of any direct or indirect actions taken by Mrs. Perrin.

- 8) The fact that Mrs. Perrin took down the notice that the Act requires to be posted in the workplace provides an inference of an anti-union bias.

The evidence before the Board was that there was an error in identifying who the employer was and she was motivated by this error. However, her counsel advised her to put the notice back up, which she did. The Board cannot infer any anti-union bias as a result of this event.

- 9) Counsel for Ms. Horne suggested that Mrs. Perrin's acquiescence in allowing Sherry Cole to organize and attempt an anti-union movement within the workplace could infer an anti-union bias on the part of Mrs. Perrin and infer a tacite approval of this activity by Mrs. Perrin.

There is no evidence before the Board that either Sherry Cole or the Anti-union group ever discussed this matter or that they were motivated by any overt or covert act of Mrs. Perrin or that were they motivated by Mrs. Perrin's acquiescence. As previously stated in reference to the Empro-Fab Limited hearing, the employer must abide by the simple rule of non interference. These facts do not lead to the inference of an anti-union bias.

- 10) Counsel referred to the memorandum of October 20, which resulted from a meeting of the staff held on October 19. (Exhibit R1) should lead the Board to the conclusion that this memo was motivated by an anti-union bias.

Evidence was lead that Mrs. Perrin brought up the subject of the union at the meeting and in particular addressed some of the statements set out in the memorandum. However, the Board is of the opinion that upon reading the

memorandum it is a restatement of the rights of the employees with respect to their sentiments, whether for or against a union. The memorandum clearly does not encourage any activity for or against a union, but appears to be for the sole purpose of advising the employees that they were free to make a choice without coercion or intimidation and that if certain events should occur they were entitled to protection through the Board. It further stated that if such unfair practices were complained of by the union or by the employee that such action would not be tolerated and would be investigated and action will be taken through the protection of unfair practice complaints before the Labour Relations Board. The Board is unable to conclude that this memorandum was an attempt by the employer to intimidate or coerce the employees involved in the union activity or supported an inference that the employer had an anti-union bias.

- 11) Counsel for Ms. Horne suggested that after it was learned that Ms. Horne was suspended, the comments of Mary Paynter, "one down one to go" (according to counsel), and the fact that Mrs. Perrin made no comment when it had been said in her presence suggests that she had an anti-union bias.

The Board acknowledges that comments of that nature are inflammatory and probably should be addressed, but the Board is unable to conclude that allowing such comments of that nature to go unaddressed, can infer, an anti-union bias.

- 12) The breach of the rules by Ms. Horne for the use of the hoover lift as a reason for dismissal, particularly in the face that the rules were breached by a previous employee several months prior with no disciplinary action can provide an inference that Mrs. Perrin was out to get Ms. Horne.

Ms. Horne's dismissal was as the result of the accumulation of all the reported incidents as well as this incident. According to the evidence it was not one single event but the totality of all the events. The Board is of the opinion that no inference of anti-union bias can be drawn from this event being part of the reasons for dismissal because another employee did not get fired or disciplined for doing the same thing.

- 13) Counsel suggested that Mrs. Perrin's refusal to meet with Mrs. Horne and explain the reasons for her dismissal could provide an inference that there was an anti-union bias.

The Board is unable to concur with counsel that this inference can be drawn. The failure by an employer to explain the reasons of dismissal do not support an inference of anti-union bias. The Board is unable to draw an inference of an anti-union bias as a result of Mrs. Perrin's refusal to meet with Ms. Horne.

- 14) Counsel suggested that the dismissal during or just after the union organizing campaign is unusually harsh.

In the Hallowell House Limited hearing reported in (1980) O.L.R.P Rep. January 35, the Board stated:

"Seldom will an employer admit that it has been motivated by an anti-union animus in discharging an employee. The Board, therefore, is required to draw its own conclusions as to the employer's motivation and in doing so must draw inferences from the evidence. In discharging an employee the Board looks for a reasonable explanation for the discharge. If the employer provides little or no explanation for terminating the employee and there is concurrent evidence of union activity the Board may, depending upon the circumstances, draw the inference that the employer had an anti-union animus and acted in violation of the Act. If the employer establishes good cause for discharge on the other hand, the Board will normally require more cogent evidence of union activity, the grievor's participation in a campaign and employers knowledge of it before being willing to draw an inference of anti-union motivation. The evaluation of the adequacy of the employers reasons for discharge is not aimed at determining whether the employer had just cause for discharge but is rather a step in the more complex process of ascertaining the employer's motivation. While unfair discharge does not itself establish a violation of the Act it may be evidence in which the Board will, in certain circumstances draw an inference of anti-union animus."

The Board is unable to infer from the evidence before it that the dismissal of Ms. Horne was unusually harsh in the circumstance. In fact, the Board is of the opinion that the dismissal resulted from good cause.

15. Council suggested the granting of the requested change in Lisa Waites' work schedule was an award for her memorandum R2 Tab 3 Page 10-13 and signing the anti-union petition, Exhibit A-1, could be an inference of an anti-union motive.

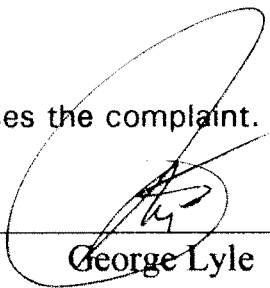
The Board concluded that this is an isolated incident, having no evidence before it to suggest a pattern of activity that could be interpreted as anti-union activity.

It was noted in the De Vilbiss (Canada) Ltd. hearing reported in (1975) O.L.R.B. Rep. September 678 that:

"the following factors are relevant in our determination of whether there was any anti-union motive for the discharge. (1) The existence of a pattern of anti-union activity. (2) The extent of the respondent's knowledge of the existence of union activity and of the employee's involvement in that activity. (3) The manner in which the employee was discharged. (4) The credibility of the witnesses."

The Board is of the opinion from the evidence presented that there was no pattern by the employer of any anti-union activity. The Board concludes that the employer took the decision of non-interference and proceeded with due administration of the business subsequent to the dismissal of Shelley MacEwen. The board concludes that the respondent had knowledge of the existence of union activity and it could be inferred that the employer was aware that Elizabeth Horne was involved in the organization of the union. However, there were other employees that were involved in the organizing of the union and the employer has not taken any action against them. In the evidence, it is apparent that Mrs. Perrin was aware of the disgruntled feeling of Ms. Horne, but no action was taken by Mrs. Perrin until such time as allegations about her own qualification were made which allegations could have affected the successful operation of the business. The Board concludes that the employer's motivation in suspending and subsequently dismissing Ms. Horne was solely motivated by Ms. Horne's attitude towards her employer and her attitude towards the residents and not the result of Ms. Horne's union activity. The Board concludes that the method of dismissal under the circumstances was not unduly harsh. Further, the Board questions the credibility of Ms. Horne in her evidence as a result of her lack of candour in allowing a misrepresentation to continue throughout the hearing.

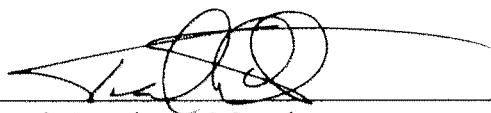
The Board therefore dismisses the complaint.



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George Lyle  
Chair

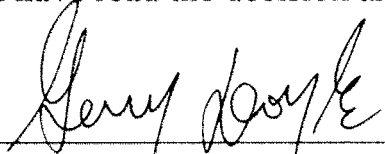
I have read the decision and **dissent** with the Chairperson.



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Ted Crockett, Member

I have read the decision and **concur** with the Chairperson.



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Gerry Doyle, Member

**THIS DECISION** made by the Labour Relations Board on this 13th day of February, 1996 and issued under the hand of its Chief Executive Officer.

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Roy J. Doucette  
Chief Executive Officer