



File No. 96-009

Decision No.

DECISION

RE: APPLICATION FOR CERTIFICATION

BETWEEN:

P.E.I. UNION OF PUBLIC SECTOR EMPLOYEES

APPLICANT;

AND:

ANDREWS LODGE INC.

RESPONDENT.

Counsel for the Applicant:

Mr. Gordon MacKay

Counsel for the Respondent:

Mr. Keith Boswell

1. BACKGROUND

An application for certification was received by the P.E.I. Labour Relations Board (hereafter the "Board") on March 27, 1996 from the Applicant, P.E.I. Union of Public Sector Employees, to be certified as a trade union representing all employees of the Respondent, Andrews Lodge Inc., employed in positions generally described as Caregivers, Cooks, Dietary Workers, Housekeeping Workers, and Licensed Nursing Assistants, except those employees in positions generally described as Administrator/Owner Operator(s), Registered Nurses, Supervisors or other persons that may be excluded by section 7(2) of the Labour Act.

Upon review of the Application, the Board satisfied itself that the Application was complete pursuant to the requirements of the Labour Act and regulations and therefore the Board had the jurisdiction to proceed to deal with the Application.

Pursuant to Section 4(1) of the Labour Act regulations, the Chief Executive Officer fixed the Terminal Date for the Application. The Reply of the Respondent, made in Form 5 as prescribed by the regulations, was received by the Board on April 17, 1996. The Board noted that the Reply was incomplete as to paragraphs 3 through to 6.1 and alleged that the Board was without jurisdiction or authority under the Labour Act to grant the Applicant's request for Certification for the following reasons:

1. The Applicant's Constitution does not permit a "unit" of members to be less than 50 people, unless approved by its Board of Directors, and the Respondent has less than 50 employees;

2. No evidence of any such approval by the Board of Directors of the Applicant of this unit of less than 50 people has been filed with the Board as required and stated in the Applicant's Constitution and By-Laws;
3. The Application was improperly executed pursuant to the Applicant's constitution and has therefore not been made by persons authorized by section 2(2)(d) of the Regulations under the Labour Act.

The Respondent further stated in its Reply that a representation vote was necessary as the evidence filed with the Board respecting the membership in the Union of employees of the Respondent is defective, unreliable or otherwise fails to reflect the wishes of the employees of the Respondent.

The Respondent requested and reserved the right to make full oral presentations to the Board respecting its Reply. Pursuant to the response filed by the Respondent, a hearing was scheduled on this matter.

By letter dated April 22, 1996 (received May 8, 1996), Mr. Brian Moriarity on behalf of the Applicant, responded to the allegations set out in the Respondent's reply. The Respondent in turn submitted its own letter to the Board on April 30, 1996. The matter was then set down for hearing to be held on May 21, 1996. At the outset of the hearing the Respondent agreed that the Board did have the jurisdiction to deal with this application, and the Board determined this in any event, and the Respondent's submissions and arguments were made with respect to the actual merits of the Application. The Applicant also agreed with the Board to allow the Respondent to amend its Reply to provide the information required by paragraphs 3 through to 6.1 of the Reply form. The Board after hearing submissions from both the Applicant and the Respondent took the matter under advisement.

2. DECISION

A. Execution of Application

The first argument to be dispensed with is the Respondent's assertion that the Application before the Board is defective in that it was improperly executed pursuant to the terms of the Applicant's Constitution, particularly Article 11, in that it was not signed by a "Unit Executive".

Section 2 of the Regulations under the Labour Act reads in part as follows:

- (1) Every proceeding before the Board shall be commenced by the filing of an application verified by statutory declaration and made in accordance with these regulations.
- (2) An application to the Board or any notice may be signed, if it is made, given or entered into . . . (d) by a trade union or employers' organization, by the president and secretary or by any two officers thereof, or by any person authorized for such purpose by resolution duly passed at a meeting of the trade union or employer's organization.

Section 2(2)(d) of the Labour Act is quite clear. The Application in this case was filed and verified by the statutory declaration of the president and first vice president of the Applicant and therefore in compliance with the Act and regulations. The Board reviewed the constitution of the Applicant and found that there was nothing in the constitution to suggest that these officers did not have the authority to execute this Application on behalf of the Applicant union.

2.B. Constitution of the Applicant Union and Membership Evidence

The Respondent presented lengthy oral argument to the Board respecting the membership and "unit" requirements as set out in the constitution of the Applicant. It submitted that the evidence provided to the Board in this regard could not be in compliance with the Applicant's constitution. After hearing the submissions of the Respondent and the Applicant the Board has concluded that this argument fails. The provisions in the constitution respecting such issues as division of members into "units", appointing of "unit executives" and the ratification of membership by the Board of Directors can only reasonably be things pertaining to how the Applicant Union would conduct itself in relation to a member once it has been certified as a bargaining agent to represent that member. For the purposes of an application for certification, it is necessary to comply with Section 3 of the Labour Act regulations.

The evidence submitted to the Board by the Applicant respecting the persons who wish the Applicant to represent them as a bargaining agent is sufficient as it meets the test set out in section 3(4)(b). The Application complies with section 3(4)(b) in that there is no need for the persons supporting the application to actually be members in good standing of the applicant union, as argued by the Respondent. Section 3(4)(b) states that a person will be deemed to support the application if at the date of the application he has signed a document stating that he wishes the applicant trade union to be certified on his behalf and has paid at least two dollars as union dues or fees within the three month period preceding the date of the application. This is the case in the present Application as well, upon review of the Union constitution, the employees are eligible for membership in the Union.


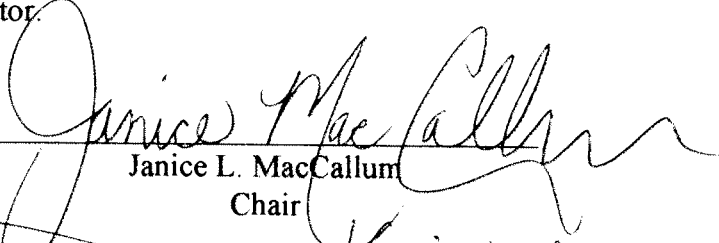
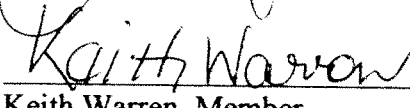
The Board also concluded that a representation vote was not required.

Furthermore, upon review of the Union's Constitution, the Board has determined that the employees are eligible for membership in the Applicant Union.

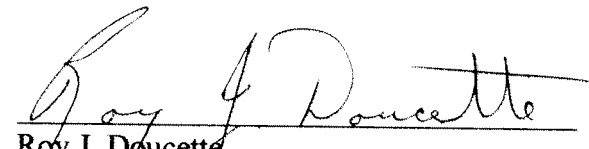
2.C. Description of Bargaining Unit

The Board heard evidence presented by the Respondent and the Applicant respecting which employees should be included in the bargaining unit, in the event the Certification Order was granted in this instance by the Board.

The Board has therefore unanimously concluded and it is therefore ordered that the P.E.I. Union of Public Sector Employees be certified as the Bargaining Agent for all employees of Andrews Lodge Inc., employed in the Province of Prince Edward Island but excluding the Director of Nursing and the Administrator.

 _____ Ted Crockett, Member	 _____ Janice L. MacCallum Chair	 _____ Keith Warren, Member
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THIS DECISION made by the Labour Relations Board on this 3rd day of June, 1996 and issued under the hand of its Chief Executive Officer.



Roy J. Doucette
Chief Executive Officer