



File No. 12-003

Decision No.

IN THE MATTER OF AN APPLICATION FOR CERTIFICATION

BETWEEN:

CANADIAN UNION OF POSTAL WORKERS

APPLICANT

AND:

MEDACOM ATLANTIC INC.

RESPONDENT

DECISION

Background

On the 21st day of February 2012, the Applicant Union, Canadian Union of Postal Workers (hereinafter referred to as CUPW) filed an Application for Certification with the Labour Relations Board of Prince Edward Island (hereinafter referred to as the “Board”) in relation to the employer Medacom Atlantic Inc. (hereinafter referred to as “Medacom”) pursuant to the *Labour Act*, R.S.P.E.I. 1988 Cap L-1.

The documents filed by CUPW included the following:

1. Application for Certification in Form 1;
2. Exhibit A to Form 1 being a list of duly elected officers;
3. Exhibit B to Form 1 being a list of members in good standing;
4. Constitution of CUPW
5. Constitution Preamble
6. Membership evidence (for the use of the Board only).

Medacom filed its Reply to the Application for Certification with the Board on or about the 9th day of March, 2012 together with a list of employees as of the 16th day of February, 2012. The Application for Certification was dated the 16th day of February, 2012, but was not filed until the 21st day of February, 2012. In addition, there was an Appendix B attached to the Reply which was a Statutory Declaration objecting to the Application for Certification on the following grounds, namely:

1. The names of the individuals who signed the Application for Certification do not appear to be the officers of the trade union;
2. There may have been a membership drive conducted on the premises of Medacom during work hours;
3. The scope of the bargaining unit consists of two distinct categories, namely:
 - (i) Answering emergency calls for police, fire or ambulance services; and
 - (ii) Answering calls for commercial businesses such as alarm companies and a variety of trade.
4. It was suggested that it might be difficult to negotiate collective agreements for two distinct roles given that employees employed in the two areas have distinct labour relations regulatory provisions, specifically the right to strike or not.

The Board received a letter from counsel for Medacom dated the 20th day of March, 2012, arguing the following:

1. Section 2(2) of the Regulations had not been complied with;
2. The Application for Certification did not include a list of officers as required by Section 3(2)(d) of the Regulations;
3. Medacom believes that the Board should conduct an inquiry to determine whether or not a union representative attended at an employee's place of work; and
4. The proposed scope of the bargaining unit is questionable.

The letter from counsel for Medacom requested a hearing on the Application for Certification.

On the 22nd day of March, 2012, Jeff Callaghan, the National Director for CUPW responded to the Reply of Medacom. In that document, Mr. Callaghan:

1. States that the names of the two individuals who signed the Application for Certification are George Nickerson and James Gallant. He states that George Nickerson and James Gallant are duly elected union officers;
2. States that at no time did any officer or representative of CUPW attend at the employee's place of work;
3. Addresses the scope of the bargaining unit.

By correspondence dated the 27th day of March, 2012, Jeff Callaghan, the National Director for CUPW forwarded to the Board a Statutory Declaration again responding to the issues raised by Medacom. In that response, Jeff Callaghan reiterated:

1. The names of the two individuals who signed the Application for Certification are George Nickerson and James Gallant. He states that George Nickerson and James Gallant are duly elected union officers. He suggests that the signatories to the Application for Certification fully comply with "*Section 2(2)(d)(i) of the Labour Act Regulations*"
2. That at no time did any officer or representative of CUPW attend at the employee's place of work; and
3. His comments in relation to the scope of the bargaining unit.

In light of the allegations that have been made, the Board has looked very carefully at the Application for Certification and considered whether or not the mandatory filings have been made such as to give the Board jurisdiction.

Relevant Legislation

The following sections of the *Labour Act Regulations* are relevant to the hearing of this matter.

2(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(2) An application to the Board or any notice may be signed, if it is made, given or entered into:

- (a) by an employer who is an individual, by the employer;*
- (b) where several individuals are jointly employers, by a majority of the said individuals;*
- (c) by a corporation, by one of its authorized managers or by one or more of the principle executive officers;*
- (d) by a trade union or employers' organization
 - (i) by any two officers of the trade union or employers' organization, or*
 - (ii) by any person authorized for such purpose by a resolution duly passed at a meeting of the trade union or employers' organization."**

3(1) An application by a trade union for certification as bargaining agent pursuant to the Act shall be made in Form 1.

3(2) Subject to subsection (2.1), concurrently with the filing of an application for certification, the applicant trade union shall file with the Board the material upon which it relies to establish its right to certification and such material shall include:

- (a) list of persons in the proposed bargaining unit who wished that the applicant trade union be certified as bargaining agent on their behalf;*

- (c) a copy of its constitution, rules and bylaws, or other instruments or documents containing a full and complete statement of its objects and purposes; and
- (d) a list of its officers.

3(2.1) *The Board may waive compliance by an applicant trade union with Clause 2(c) where the applicant trade union, by statutory declaration, declares that current copies of the union constitution or other documents required by clause 2(c) have been filed with the Board.*

3(3) *The material filed by an applicant trade union pursuant to:*

- (a) *Clauses (2)(a) and (b), shall be for the information of the Board only and shall not be available to or open for inspection by any other party to the proceedings;*
- (b) *Clause (2)(c), or material on file with the Board pursuant to subsection (2.1), shall be available to and open for inspection by any other party to the proceeding; or*
- (c) *Clause (2)(d), shall be available to and open for inspection by any other party to the proceedings only with the approval of the Board.*

3(4) *A person shall be deemed by the Board to agree to the applicant trade union being certified as bargaining agent on the person's behalf if at the date of application*

- (a) *The person was a member in good standing of the applicant trade union, and, had paid at least \$2.00 as union dues within 3 months preceding the date on which the application was filed; or*
- (b) *The person has signed a document stating that the person wishes the applicant trade union to be certified as bargaining agent on the person's behalf and has within 3 months preceding the date on which the application was filed paid at least \$2.00 as union dues or fees."*

Decision

The Chair has convened a panel of the Board to review the Application for Certification.

In light of Section 3(2) of the *Regulations* noted above, it is mandatory that an applicant seeking certification file with the Board the material upon which it relies to establish its right to certification and such material shall include the various items listed in sections 3(2)(a) – (d) of the *Labour Act Regulations*.

The Board has had occasion to deal with this issue in the past and has determined that if the required documents are not filed, the Application for Certification is not one provided for by the legislation and the Board is without jurisdiction to deal with this matter. See: *International Union of Operating Engineers, Local 902, and Schurman Supply (Charlottetown Branch) and Certain Employees of Schurman Supply Charlottetown Branch* – (June 24, 1988, P.E.I.L.R.B.); *National Automobile Aerospace*

and Agricultural Implement Workers' Union of Canada (CAW-Canada) and Garden Province Meats (1985) Inc. and United Food and Commercial Workers Union, Local 1252 (In Trusteeship) – and – United Food and Commercial Workers' International Union (January 15, 1989, P.E.I.L.R.B.).

In addition, the Prince Edward Island Supreme Court has had occasion to deal with this issue and has held that sections 2 and 3 of the *Labour Act Regulations* are mandatory and it is incumbent upon the Chief Executive Officer of the Board to determine whether there is full compliance with Regulations 2 and 3 and ensure that persons signing the application for certification do hold the offices which they purport to hold. See: *Marriott Corporation v. Construction and General Labourers' Union Local 1079A*, and *Labour Relations Board (Prince Edward Island) 1989 CarswellPEI 80 (P.E.I.S.C. – T.D.)*. McQuaid, J. states:

9. *What this hearing brought clearly, and most emphatically, to the fore was the heavy onus that lies upon the Board from the very outset of a proposed application coming before it, the duty of the Board to be fully cognizant of its duty in this regard and of the vigilance required of it in order to acquire initial jurisdiction to undertake a hearing on the merits.*

10. *Sections 2 and 3, in particular, of the regulations, appear mandatory. As they relate to applications for certification, they are required to be complied with in every detail. Unless they are so complied with, the documents deposited with the Board do not constitute an application within the meaning of the Act, and, consequently, the Board would have no jurisdiction to enter upon a hearing.*

11. *Except for the list of persons in the proposed bargaining unit and the evidence of their wish to be certified, all other materials must, on request, be made available to the employer. It is incumbent upon the Board or its Chief Executive Officer, to examine all documents presented for filing to ensure that there is not only full compliance with the regulations, but also that those persons signing the proposed application do, in fact, hold the offices which they purport to hold, and are acting within their constitutional authority.*

The case of *APM Construction v. Construction & General Labourers' Union, Local 1077*, 1998 CarswellPEI 45, is also helpful. On an application for judicial review of a decision of the Labour Relations Board, Jenkins, J. states at paragraph 12:

12. *It is a prerequisite to the Board assuming jurisdiction that the Trade Union file the material listed in Regulation 3(2). The statutory filing requirements are mandatory. Fulfilment of these statutory requirements is a jurisdictional question which is reviewable by the Court on the standard of correctness.*

The Application for Certification to the Board was signed by two individuals which Mr. Callaghan, in his Statutory Declaration, suggests fully complies with Section 2(2)(d)(i) of the *Labour Act Regulations*. Regulation 2(2)(d)(i) clearly indicates that the

Application is to be signed by any two officers of the trade union. The list of officers provided by CUPW in its Application for Certification clearly indicates that the list of the duly elected officers of Canadian Union of Postal Workers is as follows:

- President – Jeff Callaghan, National Director
- Vice President – Tony MacAfee, Regional Education and Organization Officer
- Recording Secretary – James Gallant, Regional Grievance Officer

As previously noted, Mr. Callaghan by Statutory Declaration stated that George Nickerson and James Gallant signed the Application for Certification. Mr. Callaghan attests to the fact that Mr. Nickerson is a duly elected union officer and attaches a 2011 National Convention Bulletin from the CUPW National website which appears to suggest that Mr. Nickerson is a “*Union Representative*” in the Atlantic region together with Robert Garnier. However, the CUPW National website makes it clear that there is a distinction between the National and Regional officers and Union Representatives. Mr. Nickerson is listed to be a “*Union Representative*”.

Furthermore, the list of officers provided to the Board and attached to the sworn Application for Certification does not correspond with the list provided in the Statutory Declaration of Mr. Callaghan sworn to the 27th day of March, 2012.

Thus, there is currently conflicting evidence before the Board, namely:

1. Exhibit A attached to the Application for Certification indicates that there are three officers of CUPW;
2. The Statutory Declaration of Mr. Callaghan indicates that there are numerous National and Regional officers as well as Union Representatives of CUPW, most of which are not listed on Exhibit A to the Application for Certification.

In light of the foregoing, the Board has determined that the Application for Certification currently before the Board is not one that is provided for by the Regulations in that:

1. The Application for Certification is not signed by two officers of CUPW, being two officers who are listed on the List of Officers provided to the Board with the Application for Certification; or

2. Signed by a person authorized for such purpose in accordance with Regulation 2(2)(d)(ii) as there has been no resolution provided to the Board.

For the above-noted reasons, the Board has determined that it does not have jurisdiction to deal with this Application for Certification as this time.

Other Matters

- **Disclosure of Information**

As is evident from the legislation referred to in this Decision, certain information is to be provided for the use of the Board only. That information is the membership evidence and the list of employees who wish the applicant trade union to be certified as bargaining agent on its behalf.

It became apparent when the Board reviewed the file and specifically the statutory declaration of Matthew Crossman (Appendix B to the Reply) dated the 9th day of March, 2012, that CUPW had forwarded a complete copy of its Application for Certification to Medacom, including a copy of the list of people who wished CUPW to be certified as bargaining agent.

The Board was most troubled over the fact that this information, which is supposed to be confidential and for the use of the Board, was disclosed to Medacom, thus perhaps jeopardizing the relationship of the employees with their employer.

The Board notes that CUPW did not address this in either its correspondence to the Board dated the 22nd day of March, 2012, nor its additional correspondence to the Board dated the 27th day of March, 2012. The Board was concerned that there was no mention of this fact or the reasons why this would have occurred.

- **Alleged Violations of the *Labour Act***

Medacom appears to be alleging that representatives of CUPW attended at the employee's place of work. If in fact Medacom expects the Board to deal with those allegations, it is incumbent on Medacom to file an Unfair Labour Practice Complaint with the Board in relation to same.

CUPW appears to be suggesting that Medacom willfully violated section 10(1) of the *Labour Act*. Again, if in fact CUPW wishes to pursue this allegation, it is free to file an Unfair Labour Practice Complaint with the Board.

· **Membership Evidence**

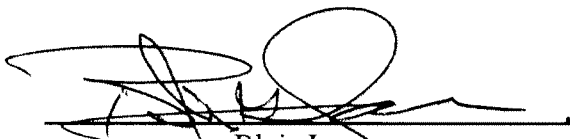
Section 3(4) of the Regulations made pursuant to the *Labour Act* has previously been reproduced herein. It clearly indicates that membership evidence is valid for a period of three months prior to the date of the Application. In light of the foregoing, if another Application for Certification together with the required documentation is filed with the Board, the Board will deal with an Application for Certification at that time.



Nancy Birt
Chair

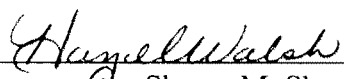


Judy Hughes
Member



Blair James
Member

This Decision made by the Prince Edward Island Labour Relations Board on the 17th day of April, A.D., 2012, and issued under the hand of its Chief Executive Officer on the 18th day of April, A.D, 2012.



FOR: Shawn M. Shea
Chief Executive Officer