



File No. 12-008

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 17<sup>th</sup> day of July, 2012, the Applicant, Canadian Union of Postal Workers, (“CUPW”) filed an Application for Certification with the Prince Edward Island Labour Relations Board (the “Board”) pursuant to the *Labour Act*, R.S.P.E.I. 1988, Cap. L-1 and *Regulations*. The Respondent named in the application is Medacom Atlantic Inc. and the detailed description of the unit for which certification was sought is described in paragraph 9 of the Form 1, as “All full-time, part-time and casual employees of Medacom Inc., employed at the Medacom facility located at 229 Sherwood Road, Charlottetown, PE, who perform 911 call answer and transfer services, including, but not limited to, ambulance services, fire services, municipal police services, other government and commercial contracts, excluding supervisors.” Along with the Application in Form 1, the Applicant filed Exhibit A to Form 1, described as a list of “*duly elected officers of the Canadian Union of Postal Workers*” and Exhibit B, with the names of the union members in good standing and copies of the signed cards. The Applicant also filed a copy of the Constitution of CUPW with the Application.

The Chief Executive Officer of the Board fixed the 10<sup>th</sup> day of August, 2012, as the terminal date.

On the 10<sup>th</sup> day of August, 2012, Medacom Atlantic Inc. (“Medacom”) filed a Reply to the application in Form 5, with attached Appendix “B” which stated, in part:

2. *The Respondent operates a call centre at Sherwood Road, Charlottetown. The nature of the calls received at the employer's business fall into two distinct categories: (1) answering emergency calls for police, fire or ambulance services; and (ii) answering calls for commercial businesses such as alarm companies and a variety of trades (eg. Furnace repairs).*

3. *All employees generally work in both areas; however, on any given shift employees are assigned to one of two work areas. The work of answering emergency calls for police, fire and ambulance services is not intermingled with commercial call answer services.*

4. *I believe it would prove difficult to negotiate collectively for the two distinct roles given that employees employed in the two areas have distinct labour relations regulatory provisions, specifically the right to strike or not.*

There were no other replies or interventions filed prior to the terminal date.

The hearing of the matter was then set down for the 5<sup>th</sup>, 6<sup>th</sup> and 7<sup>th</sup> days of November, 2012.

### **Preliminary Matters**

At the commencement of the hearing, the parties advised the Board that they had come to an agreement on the description of the unit in the event the application should be successful. The Applicant provided the Board with a handwritten description which was identified as Exhibit A-1, and which stated:

#### *Unit Description*

*All full time, part time and casual employees of Medacom Inc in Charlottetown, Prince Edward Island employed in work that includes the answer or dispatch of emergency calls for police, fire or ambulance services but excludes supervisors and those employees employed exclusively to answer commercial calls which do not involve the answer or dispatch of emergency services.*

At the outset of the hearing, the Respondent raised the issue of whether or not CUPW was a trade union within the meaning of the *Labour Act*, supra. The Applicant objected to the preliminary matter being raised and argued that it was not a relevant matter to raise at the outset of the hearing. The Applicant advised that it had received no prior notice of the Respondent's intention to raise the issue, and that it would be prejudicial to the Applicant to allow the Respondent to raise the issue at the commencement of the hearing.

After hearing counsels' argument on the matter, the Board found that it was not prepared to limit the arguments that either party wished to make, and advised the Applicant that if it sought an adjournment in order to respond to the arguments raised, the Board would grant the request. Applicant's counsel requested a one day adjournment which was granted. The hearing resumed on the 7<sup>th</sup> day of November, 2012.

## **Statutes Considered**

*Labour Act*, R.S.P.E.I. 1988, Cap. L-1

*Labour Act Regulations*

*Interpretation Act*, R.S.P.E.I. 1988, Cap. I-8

## **Texts Considered**

*Canadian Labour Law*, 2<sup>nd</sup> Edition, George W. Adams

*Ontario Labour Relations Board Law and Practice*, Sack Mitchell Price, 3<sup>rd</sup> Edition

## **Cases Considered**

*UFCW v. Boland's Limited* P.E.I.L.R.B. No.91-012

*Atlantic Meatpackers Union and Garden Province Meats Inc. et. al.* P.E.I.L.R.B. No.01-027.

*In the matter of Canada Post Corporation and Canadian Union of Postal Workers and various unions* 19 C.L.R.B. Decision No. 675

*Urban Parcel Services Limited et. al.* C.L.R.B. Decision No. 975

*419766 Ontario Ltd. c.o.b. Double MM Janitorial Services* [1990] O.L.R.D. No. 632

*P.E.I. Music and Amusement Operations Assn Inc. v. Prince Edward Island* [2011]P.E.I.J. No. 33 (P.E.I.C.A.)

## **Issue**

The issue before the Board is whether the requirements for certification as prescribed by the *Labour Act* have been satisfied. The relevant provisions of the *Labour Act* states:

*13.(1) Where a trade union makes application for certification under this Part, the Board shall determine whether the unit in respect of which the application is made is appropriate for collective bargaining.*

## **Decision**

Before the Board can grant an application for certification, the requirements as set out in the legislation must be met. These can be summarized as follows:

- a) the Applicant must be a trade union;
- b) the unit must be appropriate for collective bargaining; and
- c) a majority of employees desire the union to be certified.

If these factors are met, then the Board can certify the trade union as the bargaining agent for the employees in the unit.

To determine if the Applicant is a trade union, it is necessary to look at the definition of “trade union” in the *Labour Act*. Trade union is defined in section 1:

*(m) trade union or union means any organization of employees formed for purposes that include the regulation of relations and collective bargaining between employees and employers and includes a council of trade unions that has been vested with appropriate authority by any of its constituent unions to enable it to discharge the responsibilities of a bargaining agent.*

In argument, counsel for the Applicant made the comment that if CUPW is not a trade union, then “I don’t know what is”. The Board is aware that counsel for the Applicant was surprised that the Board would allow the issue to be raised by the Respondent. However, while it may be that CUPW is a well recognized trade union and certified in other provinces in Canada, it has not previously been certified by this Board. A previous decision of this Board, *Atlantic Meatpackers Union and Garden Province Meats Inc. et. al.* P.E.I.L.R.B. No.01-027, notes the concern at page 17 of the decision, by quoting from the *Ontario Labour Board Law and Practice*:

*If an employee organization has not already established its status before the Board, it must prove that it is a trade union within the meaning of the Act. ...The onus is on the Applicant to prove its status by way of credible oral (viva voce) testimony regarding the circumstances surrounding the formation of the union; the mere submission of a collective agreement or a constitution or even a certificate from another board will not suffice.*

Later in the same decision, the Board stated:

*When an organization seeking trade union status is a homegrown or homemade association, it must satisfy the tribunal that it is bona fide and viable as an organization in accordance with relevant tests that have been developed over the years in the jurisprudence.*

In considering whether the Applicant is a trade union within the meaning of the *Labour Act*, the component parts of the definition need to be reviewed. These are: *organization of employees that are formed for purposes that include the regulation of relations and collective bargaining between employees and employers.* An early decision of this Board reviewed the necessity of introducing evidence to the Board to ensure all of the components of the test are met. The decision of this Board in *UFCW v. Boland’s Limited* P.E.I.L.R.B. No.91-012 also quoted from Ontario Labour Relations Board Law and Practice (Sack and Mitchell, 1985) as follows:

*In order to establish its status as a trade union within the meaning of the Act, when it is required to do so, an Applicant must satisfy the Board that it is an organization formed for purposes that include labour relations. In order to do so, it must establish that it is a viable organization with a duly adopted constitution and duly elected officers who can act on behalf of the organization.*

The first witness called by the Applicant was Jim Gallant, who testified that he has been employed with CUPW since 1988, and was elected as a full time Regional Grievance Officer for CUPW in April 2008, one of only three such positions in Atlantic Canada. He testified that he deals with violations of collective agreements, takes part in arbitration hearings and has been involved in the negotiation of collective agreements, as well as being responsible for a number of bargaining units in Atlantic Canada.

With respect to the issue raised by the Respondent as to whether the Applicant is a trade union within the meaning of the *Labour Act*, supra, the Applicant adduced evidence through Mr. Gallant as to the history of CUPW and its bargaining relationships in Canada. Mr. Gallant testified that CUPW is, at present, a federal organization with a presence in every province and territory in Canada, representing over fifty thousand employees. CUPW already has a presence in Prince Edward Island representing postal workers. He noted that postal workers are divided into two categories: urban and rural. Mr. Gallant testified about the Applicant's urban operations and presented a document titled "Agreement between Canada Post Corporation and the Canadian Union of Postal Workers", which was marked Exhibit A-2. Mr. Gallant advised that this was the collective agreement in place for over forty thousand employees in Canada, with representation of approximately two hundred employees in Prince Edward Island.

Mr. Gallant also presented a document titled "Collective Agreement for Rural and Suburban Mail Carriers between Canada Post Corporation and the Canadian Union of Postal Workers", which was marked Exhibit A-3. Mr. Gallant advised that this was the collective agreement for all rural employees of Canada Post, representing approximately one hundred employees in Prince Edward Island.

Mr. Gallant testified that CUPW has been recognized by the Prince Edward Island Federation of Labour as a trade union, for several years.

Several other exhibits were introduced through the testimony of Mr. Gallant. These are identified as follows:

- Exhibit A-4 A folder with Tabs 1-6, containing cases and excerpts of statutes;
- Exhibit A-5 Order of the Canada Industrial Relations Board No. 9215-U
- Exhibit A-6 Order of the Canada Industrial Relations Board No. 10112-U
- Exhibit A-7 Collective Agreement between CUPW and Emergency Medical Care Incorporated
- Exhibit A-8 Collective Agreement between CUPW and RMS Pope Incorporated
- Exhibit A-9 National Constitution of CUPW, revised 2011

The evidence of the history of the organization of CUPW as presented by Mr. Gallant was clear and uncontradicted. CUPW was an organization originally formed by a group of postal workers employed by the Government of Canada. At Tab 1 of Exhibit A-4, the Board was provided with the case of *In the matter of Canada Post Corporation and Canadian Union of Postal Workers and various unions* 19 C.L.R.B. Decision No. 675. One of the issues before the Board therein was a global review of the existing bargaining structure with the employees of Canada Post Corporation. The case was provided to this Board as an historical reference to the development of CUPW. In the second paragraph of section II of that decision, the Board stated:

*Prior to the enactment of the Public Service Staff Relations Act in 1967 and the subsequent certificate of various unions to represent employees at what was then the Post Office department, employees of the Post Office were informally represented by various staff organizations.*

The Board also stated at page 4 of the decision:

*In 1911, the Dominion of Postal Clerks' Association was formed. This was the first association of postal clerks. It merged in 1928 with the mail porters as the Canadian Postal Employees' Association (CPEA). In 1965 it again changed its name, this time to the Canadian Union of Postal Workers.*

On page 5 of the decision:

*October 8, 1974. The two certificates were revoked. That gave rise to the applications for certification and the subsequent certification of CUPW and LCUC for the groups they currently represent.*

The Applicant filed at Tab 2 of Exhibit A-4, the case cited as *Urban Parcel Services Limited et. al.* C.L.R.B. Decision No. 975, which was an application for certification pursuant to sections 24 and 35 of the Canada Labour Code, Part I. In that decision, the Board stated:

*As far as we know, this is the first time that CUPW directly applies for certification with respect to private sector employees. This is probably why the employer challenged CUPW's status to properly represent employees of a private employer in light of what URBAN called the union's long-standing position of opposing privatization of postal services.*

*...CUPW has already established its status as a trade union pursuant to section 3 of the Code. It has been certified under this statute (Canada Post Corporation (1988 73 di 66; and 19 CLRBR (NS) 129 (CLRB no.675)).*

The Applicant also filed a case of the Ontario Labour Relations Board cited as 419766 *Ontario Ltd. c.o.b. Double MM Janitorial Services* [1990] O.L.R.D. No. 632, which was presented as evidence that CUPW has been certified as a trade union before the Ontario Labour Relations Board.

The exhibits tendered by Mr. Gallant included the National Constitution, identified as Exhibit A-9. Page 3 of the National Constitution states:

*Eligibility for membership*

*1.04 Any employee who does not perform managerial functions is eligible for membership in the Union under the following conditions:*

- a) if he/she signs an application for membership card;*
- b) if he/she undertakes to comply with the Constitution and policies of the union and the bylaws of his/her Local;*
- c) if he/she pays the initiation fee, subject to section 9.27;*
- d) if he/she is accepted by the Local.*

Article 1 of the National Constitution at page 1, states:

*1.01 The name of this union is the Canadian Union of Postal Workers, hereinafter referred to as C.U.P.W. or the Union.*

*1.02 The aims of the union are:...*

- b) to improve the general well being of its members and, in particular the wages, hours of work, working conditions and the integrity of the bargaining units for which the Union is recognized as bargaining agent;*

As referenced above, the evidence presented by Mr. Gallant laid out the history of the expansion of CUPW from its origins as a small union representing a specific group of workers in the postal services of the federal government to an organization national in scope and encompassing several collective agreements. He specifically identified the collective agreements in existence between the urban postal workers and the Canada Post Corporation, as well as the rural and suburban mail carriers. He also identified the collective agreement in place between the Applicant and Emergency Medical Care Incorporated, which is a sister company to the employer herein. These agreements are clear evidence of the existence of CUPW for purposes that include labour relations. See Exhibits A-7 and A-8.

In addition to the collective agreements filed at the hearing, the membership cards filed with the Application state as follows:

*I, the undersigned,*

- (a) apply for membership in the Canadian Union of Postal Workers and agree to abide by its Constitution and Bylaws;*
- (b) in applying for membership, I understand that the union intends to apply to be certified as my exclusive bargaining agent and to represent me in collective bargaining. I authorize the union to represent me in collective bargaining with my employer.*

*I declare that I have been provided with information respecting the manner in which initiation fees and membership dues are determined and I understand the information.*

Although the Respondent acknowledges that the Applicant is a trade union and recognized as such in other provinces of Canada, the Respondent argues that the requirements as set out in the *Labour Act* and *Labour Act Regulations* concerning the process of applying for certification may not have been properly complied with and as a result, the Applicant can not be certified as a trade union. Section 3 of the *Labour Act Regulations* states:

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

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

*(b) evidence that the persons in the list referred to in clause (a) wish 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;*

*(d) a list of its officers.*

*(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.*

The Respondent also argues that the Board cannot accept as evidence material that is not sworn, because of the requirements in Section 22(1) of the *Labour Act Regulations*, which states:

*22. (1) The Board shall accept evidence as to matters of fact only when verified by affidavit or statutory declaration or when tendered by way of sworn testimony before the Board.*

As support for its position, the Respondent asked the Board to consider the case of *Atlantic Meatpackers Union and Garden Province Meats Inc. et. al.* P.E.I.L.R.B. No.01-027. In that case a similar issue was raised and the Board made the following comments at page 13 of the decision:

*Counsel for UFCW, Local 864, argued that in order for the Application for certification to be successful, AMU had to produce evidence to the Board that it was a trade union, that the unit was appropriate for collective bargaining and that AMU had a majority of support. Counsel for UFCW, Local 864 argued that there was no evidence before the Board that AMU was a trade union as evidence can only be adduced before the Board when it is verified by affidavit or statutory declaration or sworn testimony.*

After reviewing the material filed and reviewing the Form 1 as filed in that application, the Board then stated at page 14:

*As can be seen from the foregoing Application for Certification, there is absolutely no reference to any "exhibits" that were attached to the statutory declaration. They are not incorporated by reference and there is no indication in any of the 10 paragraphs contained in Form 1, being the Application for*



*Certification that the attached documents were attached or that the attached documents are verified as being documents of AMU, the Applicant union.*

*...Accordingly, in the present case, the Board is left with a Statutory Declaration in Form 1 which makes absolutely no reference to any of the documents which are attached thereto. The attachments are the Constitution and the Minutes of the Founding meeting and the issue becomes whether or not those documents constitute evidence before the Board. There is no dispute that they were filed with the Board and they were filed at the same time as the Application for Certification in order to give the Board jurisdiction to enter upon the inquiry. However, given that AMU did not call any evidence at the hearing, the issue remains whether or not those documents constitute evidence within the meaning of the Labour Act and the Regulations made pursuant thereto.*

In the case before us, Form 1, as filed with the Board, actually does make reference to Exhibit A and Exhibit B as being part of the document. The bottom of the second page of form 1 states: “\*Note: This Application will be processed without a pre-hearing vote unless the Applicant indicates that it does require a pre-hearing vote. [Attach completed Exhibit “A” and “B”] Exhibit “A” attached to the Form 1 indicates that it is a list of duly elected officers of the Canadian Union of Postal Workers. The two individuals who swore the Form 1 are listed on the Exhibit “A” as follows:

3 <sup>rd</sup> National Vice-President	George Floresco 377 Bank St., Ottawa Ontario K2P 1Y3 (613)236-7238(phone)(613)236-7861(fax)
National Secretary Treasurer	George Kuehnbaum 377 Bank St., Ottawa Ontario K2P 1Y3 (613)236-7238(phone)(613)236-7861(fax)

Beside the name appears the signature of the individual and the document is dated at the bottom the same date of the Form 1 and it is also initialed by both signatories and the seal of the notary appears. The same detail appears on Exhibit “B” which lists the names of the members in good standing and the date each has paid the initiation fee. The document is dated the same date as the Form 1, and the initials of the deponents are clear as is the seal of the notary. It seems clear to this Board that the Exhibits were sworn to by the deponents at the same time as the Statutory Declaration of Form 1, and form part of the complete document. That was clearly not the case in the *Atlantic Meatpackers Case*, supra.

The Respondent argues that the requirements of the *Labour Act*, in particular, the requirement that the constitution be filed consequent with the Application has not been met, because the Constitution was not part of the sworn evidence filed with the Form 1. The Constitution was provided to the Board at the same time as the Application, and also introduced by Mr. Gallant in oral testimony at the hearing before the Board. The Respondent argues however, that this is insufficient to meet the requirements of the legislation. With respect, the Board does not agree. The legislation states that the Applicant union must file concurrently with

the Form 1, a copy of the Constitution. On a plain reading of the legislation, this provision has been met.

Further, the Respondent argues that because Form 1 does not specifically reference the membership cards, they can not be considered as part of the evidence and therefore, the Respondent argues, there is no membership evidence before the Board upon which to determine if a majority of employees wish the Applicant to be certified as the bargaining agent.

The Board has had the opportunity to review the membership cards which were filed at the same time as the Form 1, and, as is required pursuant to the *Labour Act Regulations*, the cards were not disclosed to the Respondent. The Board also notes the following provision of Section 13 of the *Labour Act*:

*13. (3) For the purposes of subsections (1) and (2) and for the purpose of determining whether a majority of the employees in the unit wish the applicant trade union to be certified as bargaining agent of such employees, the board shall*  
*(a) make, or cause to be made, such examination of records or other inquiries and hold such hearings as it considers necessary;*  
*(b) take such other steps as it considers appropriate to determine the wishes of the employees in the unit as to the selection of a bargaining agent to act on their behalf including, whenever the board considers it necessary, the taking of a representation vote of such employees.*

And Section 3 of the *Labour Act Regulations*:

*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 two dollars as union dues within three 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 three months preceding the date on which the application was filed paid at least two dollars as union dues or fees. (EC521/71; 651/07)*

It is clear from a review of the above provisions that the intention of the *Labour Act* and *Regulations* is to ensure the privacy of the employee who may wish to join a union, and that absolute discretion is given to the Board to make such inquiries as it determines are appropriate to determine the wishes of the employees. The *Labour Act Regulations* provide that the Board is entitled to assume an employee wishes to be a member of a trade union if the provisions of paragraph 3(4) of the *Labour Act Regulations*, set out above, are complied with. The Board must turn its mind to the membership cards filed, and ensure that the requisite provisions are met. In the case before us, the Board has done that. The membership card is reproduced previously in this decision, and the Board has reviewed all membership cards filed. With respect to the argument advanced by the Respondent, the Board can not agree. To interpret the

provision of section 22 of the *Labour Act Regulations* so narrowly as to suggest that if the membership cards are not sworn and attached as an exhibit to the Application, the material is not properly before the Board fails to take into account the other provisions of the legislation set out above. In addition, the Board agrees with the Applicant that the provisions of the *Interpretation Act*, R.S.P.E.I. 1988, Cap. I-8 in particular section 9 are helpful. Section 9 states:

*9. Every enactment shall be construed as being remedial, and shall be given such fair, large and liberal construction and interpretation as best ensures the attainment of its objects. 1981, c.18, s.9.*

On the question of statutory interpretation, the Board notes the following passage from the Prince Edward Island Court of Appeal decision in *P.E.I. Music and Amusement Operations Assn Inc. v. Prince Edward Island* [2011]P.E.I.J. No. 33 (P.E.I.C.A.), at paragraph 18:

*18. It is well accepted that statutory interpretation involves consideration of the ordinary meaning of the words used and the statutory context in which they are found. The most recent statement of the Supreme Court of Canada on this subject was written by Abella J. for the Court in Celgene Corp. v. Canada (Attorney General) [2011] S.C.J. No. 1 at para 21:*

*The parties both relied on the approach used in Canada Trustco mortgage Co. v. Canada 2005 SCC 54 [2005] 2S.C.R. 601, at para10, which confirmed that statutory interpretation involves a consideration of the ordinary meaning of the words used and the statutory context in which they are found:*

*It has been a long established as a matter of statutory interpretation that the words of an Act are to be read in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act and the intention of Parliament: see 65302 British Columbia Ltd. Vv. Canada [1999] 3 S.C.R. 804, at para 50. The interpretation of a statutory provision must be made according to a textual, contextual and purposive analysis to find a meaning that is harmonious with the Act as a whole. When the words of a provision are precise and unequivocal, the ordinary meaning of the words play a dominant role in the interpretative process. On the other hand, where the words can support more than one reasonable meaning, the ordinary meaning of the words plays a lesser role. The relative effects of ordinary meaning, context and purpose on the interpretative process may vary, but in all cases the court must seek to read the provisions of the Act as a harmonious whole.*

Jenkins, C.J., writing for the Court states at paragraph 20:

*The Legislature has provided an important general direction for construction of statutes. Section 9 of the Interpretation Act directs the proper way to interpret the provision in issue and the whole Act. Both are to be construed as being*

*remedial, and to be given such fair, large and liberal construction and interpretation as best assures the attainment of its objects.*

In the matter before, us, if this Board were to find that the membership cards as filed with an application are insufficient to support an application unless sworn, it would potentially result in questioning the ability of the employee's right to protect the privacy of his or her wishes with regard to any potential union application, as well as completely overlook the other provisions of the *Labour Act* and *Regulations* which allow for the Board to exercise its discretion as to whether the information before the Board is sufficient. Such a narrow interpretation would also fail to take into account the overall purpose of Sections 12 and 13 of the *Labour Act*, which is to make it possible for employees to be represented by a union if they so choose.

The parties also made reference in argument to the distinction often made between a well established union and a "homegrown" union. As part of the consideration of whether or not the Applicant is a trade union within the meaning of the legislation, in cases where a union is "homegrown", it seems that tribunals and courts have imposed a higher level of scrutiny to the issues of whether the union has been properly constituted, and whether those purporting to speak for the union actually have the legal authority to do so. The Board in the case of *Atlantic Meat Packers Union and Garden Province Meats Inc.*, supra, stated at page 18:

*Where an organization seeking trade union status is a homegrown or homemade association, it must satisfy the tribunal that it is bona fide and viable as an organization in accordance with the relevant tests that have been developed over the years in the jurisprudence.*

Counsel for the Applicant argued that the Board should not consider this a homegrown union seeking status or a new local looking for certification. He argued that CUPW is an existing trade union, seeking to represent a group of employees in Prince Edward Island, and its status as a union can not be compared to the facts of the *Atlantic Meat Packers Union and Garden Province Meats Inc.* case. The Board agrees. Although the Applicant Union has not previously been certified by this Board, there is no question that it is a well established union that represents thousands of employees in all provinces in Canada. To suggest that the founding members of CUPW would have to come before this Board to testify as to its inception and provide proof of its incorporating documents is absurd. As was set out in the case of *In the matter of Canada Post Corporation and Canadian Union of Postal Workers and various unions*, supra, the origins of CUPW began over a hundred years ago. The historical beginnings of CUPW is set out beginning at page 3 of that decision:

*The first staff association founded in the Post Office was the Canadian Railway Mail Clerks Federation (CRMCF) in 1889.*

The remaining history of the transition from its early inception to the status of CUPW today is succinctly set out in following paragraphs of the same decision.

What this Board need to be assured of is whether the parties who swore the statutory declaration to commence the application had the corporate authority to do so. The evidence before us is that the two individuals who swore the application are identified as 3<sup>rd</sup> National Vice-President -George Floresco and National Secretary Treasurer - George Kuehnbaum. The Constitution of CUPW at Article 4, sets out the composition of the Executive Council, which comprises the list of officers as set out in the Exhibit "A" attached to the Application. Article 4 identifies the position of 3<sup>rd</sup> National Vice-President as well as National Secretary Treasurer to be officers of CUPW. The evidence before the Board that the two individuals who swore the Form 1, namely, George Floresco and George Kuehnbaum are officers of CUPW was uncontradicted.

The decision of this Board in *Atlantic Meatpackers Union, supra* at page 20 states:

*Clearly, the law would appear to be that oral testimony is required for the most part, or certainly evidence on which the Board can rely and make a finding. There is no such evidence before the Board within the meaning of the legislation and no person called to give oral testimony before the Board. There is no Affidavit before the Board, no sworn testimony provided by AMU, and the only statutory declaration that was filed is the one previously referred to which did not incorporate any exhibits.*

The matter before us is not on par with the *Atlantic Meat Packers Union* case, *supra*. This Board does have before it oral testimony, as well as the sworn statutory declaration evidence. After a review of the evidence presented, including the materials filed with the Application for certification, as well as the oral evidence from Mr. Gallant, and all exhibits, the Board is of the view that CUPW is a trade union within the meaning of the *Labour Act*.

Once the determination has been made that the Applicant is a trade union within the meaning of the *Labour Act*, the next question the Board must consider is whether the unit applied for is appropriate for collective bargaining. As was set out earlier in this decision, the parties are in agreement on this point should the application be allowed. The parties have agreed on the description of the unit as follows:

#### *Unit Description*

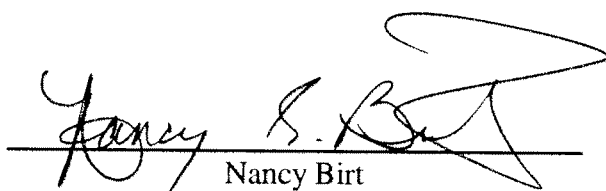
*All full time, part time and casual employees of Medacom Inc in Charlottetown, Prince Edward Island employed in work that includes the answer or dispatch of emergency calls for police, fire or ambulance services but excludes supervisors and those employees employed exclusively to answer commercial calls which do not involve the answer or dispatch of emergency services.*

The Board has no concern with this description and accordingly finds the unit to be appropriate for collective bargaining.

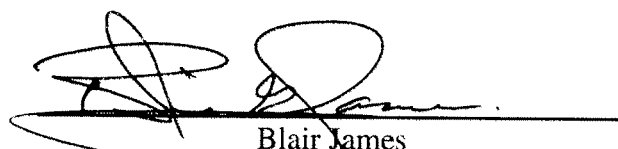
The final consideration is whether a majority of the employees wish the union to be certified. As has also been set out previously, the Board has before it as part of the file record, the membership cards, which confirm the requirements of section 3(4) of the *Labour Act Regulations* have been met. The Board is satisfied that a majority of the employees wish the Applicant to be certified.

As a final note, the Board notes that two days after the completion of the hearing, it received a letter purporting to be from an employee of the employer, and stating that the employees did not wish the union to be certified. This letter was received well after the terminal date of August 10, 2012, as well as after the closing of the hearing and the tendering of all evidence by each party. Furthermore, the document is not sworn and is signed by only one person who claims to be an employee. There is no sworn evidence before the Board in this regard, and even if there was, the Board is not required to take into account evidence that is provided after the close of the hearing.

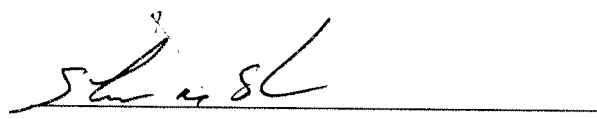
For all of the above reasons, the Application for certification by CUPW is therefore allowed and the unit as set out above is hereby certified.

  
Nancy Birt  
Chair

  
John Cormier  
Member

  
Blair James  
Member

This Decision made by the Prince Edward Island Labour Relations Board on the 10<sup>th</sup> day of May, A.D., 2013, and issued under the hand of its Chief Executive Officer on the 10<sup>th</sup> day of May, A.D., 2013.

  
Shawn M. Shea  
Chief Executive Officer