

BRITISH COLUMBIA LABOUR RELATIONS BOARD

SIMON FRASER LODGE INC.

(the "EMPLOYER" or "SIMON FRASER LODGE")

-and-

HEALTH EMPLOYERS ASSOCIATION OF BRITISH COLUMBIA

(the "HEABC")

-and-

HOSPITAL EMPLOYEES' UNION

(the "Union")

PANEL: Paul Johnston, Vice-Chair

CASE NOS.: 37186 and 37188

DATE OF DECISION: February 17, 1999

DECISION OF THE BOARD

I. NATURE OF APPLICATION

1 The Union makes two separate applications under Section 139 of the *Labour Relations Code* to include in its bargaining unit Margaret Lavalliere, the Confidential Administrative Assistant, and Elizabeth Catarino, the Accountant. I have decided that these two applications should be consolidated.

2 The Union asserts that both Lavalliere and Catarino are employees under the Code as they do not perform management functions. The HEABC, the Employer and the employees in question oppose the applications arguing that there would be a conflict of interest if the positions were included in the bargaining unit.

3 The HEABC, the Employer and the employees in question have all filed submissions. As a consequence of my conclusion in this matter, only the initial applications of the Union have been considered except for those facts, supplied by the Employer, which are set out in the background portion of this decision. I have included these facts in order to provide context only for the decision.

II. BACKGROUND

4 The Employer submits that Simon Fraser Lodge is a privately owned, multi-level care facility with 116 residents located in Prince George. The Union is certified to represent "employees of Employers listed in the attached Appendix represented by the Health Employers Association of British Columbia". The Employer is listed in the appendix. The appendix is a consolidated certification for facilities in the health care sector.

5 There are approximately 115 to 120 employees in two bargaining units at the facility. There are 4.5 full-time equivalent management staff including the Confidential Administrative Assistant and Accountant at issue in these applications. One further excluded position, the Assistant Administrator, was eliminated in 1996. The Confidential Administrative Assistant reports directly to the Accountant and is directed by the Administrator.

6 The Union does not dispute these facts in its reply submission.

a. The Confidential Administrative Assistant

7 The Union submits that Lavalliere schedules and performs posting and payroll duties. It asserts that she does no confidential typing and is not involved in the grievance procedure. The Union submits that she does not have access to personnel files. The Union takes issue with the accuracy of certain of Lavalliere's alleged responsibilities as set out in the Employer's Policy and Procedure manual (the "manual").

8 The relevant portion of the manual is attached to the Union's application. It sets out Lavalliere's responsibilities with respect to maintenance of the scheduling programme and posting of positions as per the collective agreement. It also indicates that she completes all Workers' Compensation Board, LTD, [EI] and ROE forms. The manual indicates that it is Lavalliere's responsibility to maintain the confidential personnel files. It also sets out that she also attends grievance and labour-management meetings as requested. The manual also indicates that Lavalliere participates in the development and implementation of essential services plans.

9 The Union submits Lavalliere has never attended a grievance or labour-management meeting and attended at one arbitration hearing for one-half a day. It asserts that her role in staff meetings is to take notes and that she does not sit on any management committees. The Union disputes that Lavalliere was involved in essential service planning.

b. The Accountant

10 The Union submits that Catarino carries out "all levels and types of accounting duties, including, but not limited to: Payroll functions, annual budgets, and residents' payments and accounts." It asserts that she does no confidential typing and does not participate in the grievance procedure. The Union submits that Catarino has no access to personnel files. It asserts that Catarino has never attended a grievance meeting and has not been involved in essential services planning.

11 The Union submits the portions of the manual which are relevant to Catarino's position. It disputes whether Catarino carries out certain of the tasks set out in the manual.

III. ANALYSIS AND DECISION

12 Applications to the Board are required to meet certain long-standing criteria. These criteria are set out in an April 14, 1982 Memorandum by then Chair Stephen Kelleher. The criteria are published in the Board's Information Bulletin No. 9 in the Practice Manual.

13 Under Rule 2, the Board may require that an application under a specific provision of the Code contain certain specified information. In the absence of the

specified information, the Board may decline to commence a proceeding with respect to the application. The relevant part of Rule 2 reads:

2. (2) *In addition to any other information required by the Code, these Rules or the board, an application shall contain*
- (f) an outline of the facts and circumstances upon which the applicant intends to rely, including when and where the relevant facts occurred and, where known, by whom any actions alleged were taken; (my emphasis)
- (5) Unless otherwise permitted by the board, a proceeding is only commenced on compliance with the applicable requirements of the Code and these Rules.

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The specific information in a Section 139 application that the Board requires is:

- (i) Name, address and telephone number of the employer and of the union,
- (ii) date of certification,
- (iii) description of the bargaining unit as provided in the certification or application for certification, or in the collective agreement if it differs,
- (iv) name, job title and work location of the person in question,
- (v) length of time the person has held the position,
- (vi) current status - included or excluded,
- (vii) any correspondence between the parties with respect to the position,
- (viii) current job description and a copy of the organization chart showing the location of the position in question,
- (ix) detailed description of the actual duties performed by the person, especially as they relate to the criteria, considered by the Board in determining exclusions [or inclusions],
- (x) salary and any special benefits received by the person,
- (xi) other similar positions which have either been either included or excluded,

- (xii) reasons why the applicant feels the person should be included or excluded, and
- (xiii) any other information which may be pertinent.

15 A party who initiates an application under Section 139 of the Code must show that three prerequisites have been met before the Board will adjudicate the application. The three prerequisites, are:

- (i) The incumbent should have performed the duties of the position for at least 90 days,
- (ii) the employer and the trade union must have attempted to resolve the matter themselves, and
- (iii) the application must provide specific details regarding the position on which the determination is sought.

16 Both of the applications brought by the Union are deficient. The information with respect to points 2, 3, 4, 5, 8, 9, and 11 is either not included or is incomplete. There is no indication as to whether the Union has information with respect to points 7 or 11. The Union has not suggested that the information required is not available to it.

17 More importantly, there is no indication that the prerequisites for bringing a Section 139 application have been met. In particular, there is no indication that "... the employer and the trade union...have attempted to resolve the matter themselves". In the absence of some evidence or an assertion that an attempt made in good faith by the parties to settle this issue, the Board will not normally process a Section 139 application. The purpose of requiring settlement discussions is two-fold: the parties may resolve the dispute without the unnecessary use of the Board's finite resources; and the parties will have the opportunity for full disclosure of all of the relevant information. It is expected that both parties will cooperate fully in disclosing all relevant information during the settlement discussions.

18 As there is no indication that the prerequisites have been met for this application, I find that adjudication of the issues is premature. If settlement discussions are not successful, any subsequent application must contain the information required by the Board in Bulletin No. 9 or an explanation as to why the information is not available. Failure to meet these criteria may result in the Board choosing not to proceed with application in accordance with Rule 2(5). Compliance with Rule 2(2)(f) includes compliance with the requirements set out in the Bulletin.

IV. CONCLUSION

19 I dismiss the Union's applications as neither have met the prerequisites for applications made under Section 139. They are premature and do not contain the requisite information for an application under Section 139.

LABOUR RELATIONS BOARD

PAUL JOHNSTON
VICE-CHAIR