

LABOUR RELATIONS CODE  
(Section 84 Appointment)  
ARBITRATION AWARD

UNITE HERE, LOCAL 40

UNION

ECN HOLDINGS LTD. (VACATION INN)

EMPLOYER

(Re: Pub Closure – Employer No Evidence Motion on Portion of Union Claim)

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Arbitration Board:	James E. Dorsey, Q.C.
Representing the Union:	Leo McGrady, Q.C. and Sonya Sabet-Rasekh
Representing the Employer:	Marcia McNeil
Dates of Hearing:	May 7; November 1, 2, 5 and 8, 2012
Dates of Application and Submissions:	January 15; February 12 and 13, 2013
Date of Decision:	February 18, 2013



[1] The union concluded the presentation of evidence on November 8, 2012. The following persons testified: Jamie Ayotte, Lynda Joyce, Jim Pearson, Shannon Dixon and Teresa South.

[2] In preparation for the presentation of its evidence at the continuation of hearing on February 25<sup>th</sup>, the employer applies to dismiss a portion of the union's case for which the employer says the union called no evidence to support its claim. This no, not insufficient, evidence motion at the conclusion of the union's case revisits a protracted dispute over the scope of the grievance.

[3] Murphy's Pub managed by Bill Murphy was an on-location, contracted service business at the full service Vacation Inn. In March 2011, new owners purchased the hotel, which had been operated by a receiver manager since July 2009.

[4] The employer says it decided in April 2011 that it would not renew the lease for the pub premises beyond September, but delayed telling Mr. Murphy until June 9<sup>th</sup>, the day after the Labour Relations Board held a vote on an employee application for cancellation of the union's certification. The Board dismissed the application June 23<sup>rd</sup>.

[5] In the meantime, in April, May and June, the union and employer had resolved disputes over challenges to employees eligible to cast ballots in the vote; employer liability for debts owed to the union by the previous owner; and the employer being bound by the existing union certification and collective agreement.

[6] In August 2011, the employees of Murphy's Pub were given layoff notice effective September 30, 2011. The union grieved the pub closure and layoffs on October 4<sup>th</sup>.

[7] On October 24<sup>th</sup>, after the closure of the pub, employees applied to vary the certified bargaining unit to delete front desk, maintenance, housekeeping, lounge and pub employees directly employed by the employer. The union would continue to represent the laid off pub employees.

[8] The Board dismissed this application on February 9, 2012 and denied the union's request to impose a time bar against future cancellation applications. (*ECN Holdings Ltd. (c.o.b. Vacation Inn (Certain Employees))* [2012] B.C.L.R.B.D. No. 41)

[9] At the beginning of the arbitration hearing on May 7<sup>th</sup>, the employer objected to the union enlarging the scope of the grievance and arbitration to include alleged unfair labour practices related to the employees' two applications to the Board. The union had sent the employer additional particulars on May 6<sup>th</sup> the main focus of which were employer actions in relation to the employees' applications.

[10] I ruled the allegations of fact related to the employee applications and allegations of contraventions of the *Labour Relations Code* based on these facts were asserted by the union as the true, previously unrevealed, reason for the pub closure and the effective continuation of pub operations through an adjacent lounge. The alleged facts and contraventions of the *Labour Relations Code* are within my jurisdiction and must be heard if I am to have regard to the real substance of the matter in dispute and the respective merit of the positions of the union and employer.

[11] In July 2012, I directed the union to provide a single statement of full and final additional particulars no later than August 10, 2012. (*ECN Holdings Inc. (Vacation Inn) (Murphy's Pub Closure Grievance)* [2012] B.C.C.A.A.A. No. 99) The union's amended particulars and the employer's particulars in response are appended.

[12] After exchange of particulars, a case management conference and opening statements, the employer applied on November 1<sup>st</sup>, the first day of continuation of hearing, for an order that I have no jurisdiction to hear any allegation of an unfair labour practice and exclusion of any evidence related to the employees' October application to the Labour Relations Board as irrelevant because it could have no link to the earlier grievance of the September pub closure.

[13] I affirmed my earlier ruling that the union could expand the scope and nature of the grievance with rulings to ensure the allegations were particularized. I ruled the evidence sought to be adduced to explain the decision to close the pub is within my jurisdiction and is relevant to the real substance of the matter in dispute, namely, was

the pub closed for business reasons or was it closed as a pattern of conduct to persuade employees to decertify the union.

[14] I ruled that accepting the employer's objection to the anticipated evidence related to those particulars would now reframe and limit the scope and nature of the grievance permitted in my May 7<sup>th</sup> ruling. The employer's objection was dismissed. I concluded the oral ruling:

In making this decision, I make no ruling on the scope of my jurisdiction beyond the collective agreement to find any contraventions of the unfair labour practices provisions of the *Labour Relations Code*. As I have said in our case management conferences and on earlier applications, this is a matter to be addressed in final submissions after the evidence has been heard.

[15] In support of this no evidence motion, the employer submits the allegations of unfair labour practices were tied to the original grievance and "in the absence of any evidence linking the second decertification application to the pub closure grievance, the Employer should not be required to defend a series of specious allegations which have no bearing on the grievance originally filed in October 2011." In addition, the employer submits Shannon Dickson's testimony, contrary to union assertions, was that the allegations the union raised in May 2012 were known to the union in January 2012.

[16] The employer submits:

Having now heard the Union's evidence, it is our submission that although the Union has raised a number of unfair labour practice allegations relating to the second decertification application, it has led absolutely no evidence that would link those unfair labour practice allegations, or the second decertification application to the pub closure. We submit that in the absence of any evidence linking the second decertification application to the pub closure grievance, the Employer should not be required to defend a series of specious allegations which have no bearing on the grievance originally filed in October 2011.

You will recall that the Union first raised allegations of unfair labour practices on May 6, 2012, the day prior to the above-noted hearing being scheduled to commence. In raising the allegations at that late stage, Mr. McGrady, on behalf of the Union, asserted that:

- a) The allegations of unfair labour practices were tied to the original grievance; and
- b) The Employer had taken steps to "intimidate and offer incentives to employees [and in doing so had] succeeded in achieving the silence of the employees until [Sunday, May 6, 2012]".

The evidence led by the Union in the hearing of this matter disproved both of those assertions. First, the evidence relating to the Union's assertion of unfair labour practices in relation to the second decertification application arose primarily through its witness, Shannon Dickson. At no time in her evidence, did Ms. Dickson lead any evidence

whatsoever to suggest that the decision of the hotel to end the lease to Mr. Murphy of the pub, and to not re-let the space in September 2011 was in any way connected to the alleged unfair labour practices.

Indeed, those unfair labour practice allegations related primarily to the front desk, housekeeping, and laundry divisions of the hotel, and no evidence was led regarding the pub or restaurant departments of the hotel that were operated by lessees [While the lounge was also originally operated by a lessee, effective October 1, 2011, it was operated directly by the hotel].

Further, the evidence clearly demonstrated that the Union was well aware of its members' allegations of unfair labour practices long before this hearing commenced. First, it was the evidence of Jamie Ayott that she disclosed her allegation very widely to her co-workers, and she believed as well, to Ms. South in June 2011.

Further, and more critically, the constantly shifting allegations in relation to the second decertification application were introduced through the evidence of Shannon Dickson. While Ms. Dickson's credibility is very much in question, she did testify that the allegations made in the hearing were disclosed in their entirety to the Union in January 2012. You will recall that the second decertification application was filed on October 24, 2011, but the Labour Board did not render its decision regarding the partial decertification application until February 9, 2012. The Union had more than ample time to raise its unfair labour practice allegations with the Labour Board should it have chosen to do so. That it did not, suggests that the Union too, had reason to question the credibility of Ms. Dickson.

However, for the purpose of this motion, even if all of the allegations asserted by Ms. Dickson were true, absolutely none of her evidence tied in any way, the unfair labour practice complaints to the closure of the pub, the subject of the original grievance.

That Ms. Dickson proffered no evidence relating to the closure of the pub is not surprising in light of her evidence that she was hired by ECN on June 23, 2011. The first decertification vote was counted on June 8, 2011. Ms. South confirmed that Bill Murphy communicated to her that his lease was not renewed; a decision made on June 9, 2011. The timing of events demonstrated that Ms. Dickson was hired after the first decertification vote had failed, and after the decision had been made and communicated to the Union that the lease would not be renewed for the pub.

In *The Law of Evidence in Civil Cases* (Toronto: Butterworths 1974), the authors J. Sopinka and S.N. Lederman, state at p. 521:

If a Plaintiff fails to lead sufficient material evidence, he may be faced at the close of his case by a motion for non-suit by the Defendant. If such a motion is launched, it is the judge's function to determine whether any facts have been established by the Plaintiff from which liability, if it is an issue, may be inferred.

In *317159 BC Ltd. v. CA Boom Engineering (1985) Ltd.* [19901 BCJ 2699, the Court of Appeal confirmed that the role of an adjudicator in a no-evidence motion is to determine whether there is "any evidence capable of supporting the Plaintiff's claim" (para 33).

While we are prepared to defend the grievance originally filed, the Employer should not be required to defend untimely allegations of unfair labour practices which the Union was unable to demonstrate had any relevance whatsoever to its original grievance. We ask therefore, that you declare that the Union's claims relating to the second decertification application to be dismissed.

[17] The union submits:

The first decertification vote was counted on June 8, 2011. The very next day, a decision was made to end the pub's lease. The Union submits that the Employer's decision to close the pub reinforced its unfair labour practices. The former decreased the number of Union supporters at the Hotel, while the latter sought to increase the Union's opponents who could vote in the second decertification vote. The aim of both was the decertification of the Union.

In order for a no evidence motion to succeed, a respondent must demonstrate that the plaintiff has led no evidence capable of supporting its claim - a higher threshold test than an insufficient evidence motion. Here, the Union has led evidence of the relative levels of Union support in the former pub and the rest of the Hotel, as well as a host of unfair labour practices, whereby the Employer sought to increase the chance of Union decertification. The unfair labour practices are probative as to the true motivations behind the closure of the pub. Consequently, the Union respectfully requests that you dismiss the Employer's no evidence motion.

[18] The union points to the following as "ample evidence in support of its claim that the Employer has engaged in unfair labour practices."

Shannon Dixon gave evidence that:

1. Bob Lynn asked her if she would vote to decertify the Union prior to giving her a job offer.
2. Bob Lynn told her that she would receive Union wages and hours if the Union was decertified.
3. She believed she was being hired to help decertify the Union.
4. She was Head Housekeeper. Please note that the Union submits that she was a manager and agent of the Employer.
5. Bob Lynn asked her to hire people who would vote to decertify the Union.
6. She told Howard Redford and Gloria Heston that they could have a job at the Vacation Inn if they were prepared to tell Bob Lynn that they would vote to decertify the Union.
7. She spoke to Union supporters to discourage them from voting against decertification while Cecilia Aldea, an agent of the Employer, would listen to their conversations.
8. People on-call who were identified as Union supporters, such as Sharon Fuller, would receive less shifts than those who were identified as Union opponents who were allowed to work "as much as they wanted."
9. That following the second decertification vote of October 24, 2011, all hotel employees were placed on call. Please note that the Union submits that this was an act of retribution against the Hotel's Employees.
10. In July, 2011, which followed the failure of the first decertification vote, the number of staff at the Hotel began to increase beyond what was required by the Hotel's occupancy.
11. The number of staff at the Hotel exceeded occupancy requirements into September and October ahead of the second decertification vote.

We stress that the Employer did not dispute significant portions of Ms. Dixon's testimony through cross-examination, notably points: 1, 2, 4-9. On this issue, the Union relies on the

decision of Arbitrator Burke in *Insurance Corp. of British Columbia v. Canadian Office and Professional Employees' Union, Local 378 (Scrabuik Grievance)*, [2010] B.C.C.A.A. No. 154, paragraphs 13 to 19 [copy attached to e-mail]. We say the Employer was obliged to cross-examine on these points if it intended to contradict them.

In addition to Shannon Dixon, the Union also called Union Representative, Teresa South, who testified that:

1. Before the first decertification vote, she called the Hotel's staff to determine their support for the Union which she noted on a list dividing the pub staff from the lounge staff who were not supportive of the Union. See Tab 14 of the Union's Book of Documents.
2. The pub staff were the Hotel's strong Union supporters.
3. The pub staff were more vocally supportive of the Union than any other group of employees in the Hotel.
4. The pub staff were "pretty much equal" in their support of the Union, but that Lynda Joyce, Jaime Ayotte, and Wane Richards were especially supportive.
5. The second decertification voter's list did not include pub staff.

The Union also called Jaime Ayotte, a former pub employee who testified that:

1. She and the other pub workers, with the possible exception of Jamie Morison, were Union supporters.
2. Bill Murphy told her that the pub would close if the Union was not decertified.
3. An employee named Tricia asked people to sign a decertification petition during what Ms. Ayotte believed to be working hours.
4. She believed the pub was closed because it was a "Union bar."

Finally, Lynda Joyce, another former pub employee also testified that she was a Union supporter.

[19] In reply, the employer submits the union has failed to "... draw any link between the allegations of unfair labour practices surrounding the second decertification application to the original grievance."

The Union's numbered paragraphs outlining its' characterization of Ms. Dixon's evidence relate to the Hotel employees and not the Pub employees. The evidence of Ms. South and Ms. Dixon relate to the first decertification application. We note that in point #5 relating to Ms. South, it is the Industrial Relations Officer that creates the voter's list. Whether the laid off pub employees should have been included on the list was an issue for determination by the Board and is not evidence of an unfair labour practice. Finally, while we disagree that the decision to close the pub was made the day following the count of the first decertification vote, this is not evidence that links the second decertification application to the pub closure.

[20] The employer's motion encompasses a claim the union adduced no evidence that the employer engaged in an unfair labour practice with respect to the October application to vary the union's certification; the union adduced no evidence that links its allegations to the original grievance over the pub closure rather than to other divisions



within the hotel's organization; and the union had knowledge of the allegations on which it relies in January, not first in May 2012.

[21] Despite the union's reply that it was taking the opportunity of this motion to "respond to the Employer's concerns regarding the timeliness of the Union's unfair labour practice allegations," I am making no ruling with respect to whether the union first knew about the allegations in January or May or another time and the effect, if any, that knowledge has. That is matter that can be addressed in final submissions.

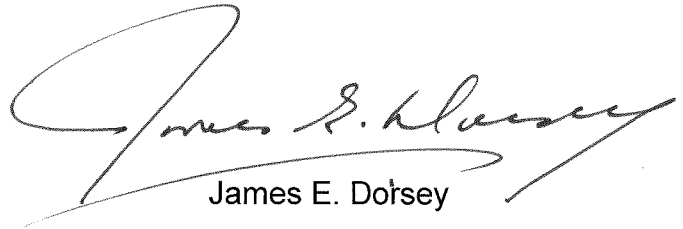
[22] The employer did not elect not to call evidence if its motion is dismissed. The union has not raised the issue of an election. I am not exploring when a party might be required to make an election as a condition of a no evidence non-suit motion, as it often is on an insufficient evidence non-suit motion. I am not putting the employer to an election before considering this motion.

[23] Consideration of a no evidence motion and any conditions that accompany consideration is a discretionary matter for a grievance arbitrator in British Columbia. Significant consideration are whether adjudicating the motion and the accompanying determination of the elements to be proven and the existence of any evidence will facilitate a fair and timely resolution of the dispute, further the purposes of the *Labour Relations Code* and enable an arbitrator to meet his or her duties under *Code*.

[24] This motion is not directed to the entire grievance. It is a continuation of a disputed matter that has been the subject of earlier motions and rulings. Granting the motion will not facilitate clarity in the relevance of the evidence adduced or the extent of permissible cross-examination of any witnesses called by the employer. Granting the motion will not appreciably shorten, and might extend, the remainder of the hearing. In the context of this proceeding and the extensive particulars from the union and employer, it was reasonable for the union to expect it would be cross-examining employer representatives on the matters that are the subject of this motion. It is not self-evident without searching inquiry and consideration of the extent of application of the burden of proof issues raised by the union in its particulars that the employer has met the threshold to establish there is no evidence as it asserts.

[25] It is far from clear that the interest in not having the employer defend an allegation for which there might be no evidence adduced by the union will, on balance, in the circumstance of this grievance arbitration, facilitate either a more orderly, constructive or expeditious resolution of the dispute. Consequently, without examining whether there is no evidence, I exercise my discretion to dismiss the motion.

FEBRUARY 18, 2013, NORTH VANCOUVER, BRITISH COLUMBIA.



James E. Dorsey

## **Appendix – Union and Employer Particulars**

### **Union Particulars Provided April 20, 2012**

#### **Collective Agreement Articles violated by the Employer**

- Article 4
- Article 6.01(b)
- Article 10
- Any other applicable articles

#### **Particulars of Violation**

1. The Vacation Inn (the "Hotel") has a pub known as "Murph's Pub" (the "Pub"). The Pub is located adjacent a Lounge at the Hotel.
2. Pub employees were members of the Union and were employed by the Hotel for service at the Pub as servers, bartenders, or both. Pub employees have been well-known Union activists.
3. In or about July 2009, the Hotel was placed into receivership and the Hotel continued to be operated by the Receiver-Manager until the property was sold. In March 2011, the property was purchased by ECN Holdings Ltd.
4. The Pub was run by Bill Murphy who leased the pub space from the Hotel, as contemplated in Article 2.04 of the Collective Agreement. At the end of September 2011, the Hotel ended its lease relationship with Bill Murphy.
5. On or about September 30, 2011, the Hotel laid-off all Pub employees effective September 30, 2011. The stated reason for the layoffs was the closure of the Pub. The Hotel did not lay-off employees working in the Lounge.
6. The Union was not provided with any written notice, under s. 54 of the *Labour Relations Code* or otherwise, concerning the closure of the Pub and the layoffs. Pub employees were not properly provided with written notice by the Hotel concerning the closure of the Pub and the layoffs.
7. The Hotel continues to operate the Pub or the space formerly known as "Murph's Pub". Services and events are continually offered and advertised at the Pub for guests, including the service of liquor and other beverages. Off-track course betting, events and dances requiring services formerly performed by Pub employees also continue to take place. Guests and patrons continue to attend the Pub space without employee supervision and consume liquor and beverages provided by the Lounge.
8. Services such as the provision of beverages to guests and patrons are now provided by Lounge employees, which were formerly performed by Pub employees. All but one of these Lounge employees has less seniority than many, if not all, of the Pub employees who were laid-off by the Hotel. It is the

Union's position that Pub employees' positions at the Hotel have been, in effect, replaced by less senior Lounge employees.

9. It is also the Union's position that the Hotel continues to have available work for the Pub employees. Although the Hotel continues to provide services and events at the Pub, none of the Pub employees, except for one or two employees on a limited part-time basis, have been recalled for work.
10. Overall, the Union's position is that the Hotel has improperly closed Murph's Pub and improperly laid off Pub employees. The continued provision of services and events at the Pub and Pub space requires the recall of the affected employees.

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### **Union Particulars Provided May 6, 2012 as Amended August 10, 2012**

1. On or about the day before the first decertification vote (which I believe was on June 23, 2011), Bill Murphy, lessee of Murph's Pub, approached Jamie Ayotte. He told her that while he could not tell her how to vote, he could tell her that if the Union wasn't voted out, the pub would close. We will argue this is an unfair labour practice in these circumstances, and a violation of sections 6(1), 6(3)(a), 6(d), and 9. We will rely on section 14(7), the reverse onus provisions.
2. We will also argue that conduct and the subsequent lay-off constitute an illegal lock-out and a violation of section 57(2). We will also rely on the reverse onus provisions in section 63(2).
3. In addition, we have learned that the employer, through Bob Lynn, General Manager of the Vacation Inn (the "Hotel"), hired Cecilia Aldea to organize and file the two decertification petitions. She was hired soon after the Hotel was transferred to ECN Holdings Ltd. We maintain that Ms. Aldea was acting as an agent of the Hotel at all times and was hired for the purposes of assisting in the decertification applications. Bob Lynn frequently met with her to manage her in that illegal objective. That conduct was in violation of section 6(1) and 6(3)(d) of the Code.
4. As part of this scheme, Ms. Aldea openly conducted repeated polling of the employees on company time just before the actual vote was held. This polling took place at the Hotel before the second decertification vote in October 2011. Ms. Aldea also asked most employees how they were going to vote. She communicated the results, which favoured decertification, to Bob Lynn. Cecilia Aldea spoke to all employees in the housekeeping department except for Vicki and Sharon, and to employees at the front desk and in accounting about how they were going to vote.
5. We will call evidence that on April 20, 2011, Bob Lynn, Wayne Hopkins and Mark with ECN Holdings Ltd. told employees that if the Union persisted in efforts to collect severance pay, as well as unpaid benefit payments that had been deducted from the employees, but not paid over to the appropriate trusts, they

would close the hotel on April 25, 2011. As a result, the employees signed a petition instructing the Union to discontinue efforts to collect these amounts.

Wayne Hopkins of ECN Holdings Ltd. also informed the Union, through Teresa South, Area Steward, of this position.

### **Union Particulars Provided May 14, 2012 as Amended August 10, 2012**

6. On or about Tuesday, June 21, 2011 during working hours, just prior to the first vote, Bill Murphy came up to Jamie Ayotte in the pub and told her that if the Union did not get voted out in the hotel, the hotel would close. While Mr. Murphy was the lessee and the manager of the pub, he was speaking on behalf of the owners of the hotel itself and referred to the hotel closing if the Union was not voted out.

Ms. Ayotte is uncertain of the date but knows it was two days before the actual vote, but before the vote was held. On the following day, Ms. Ayotte then told the other Pub employees at Murph's Pub (Wayne Richards, Rob White, and Lynda Joyce) of what she had been told by Mr. Murphy. Melanie Evans was in the near vicinity when Ms. Ayotte spoke with these employees and overheard the conversation.

7. A woman named Trish had worked for a number of years at the restaurant. During working hours, and at the request of Bob Lynn and Kitty Dang from Kitty's Hideaway, she went around with a piece of paper and asked other workers to sign it indicating their opposition to the Union. She spoke with Lynda Joyce and she was seen speaking with employees in the Kitchen and the Lounge. She was seen doing this on at least several occasions on the days leading up to the decertification. At all times, she was acting on paid time. She was doing the company's bidding in these activities. The Union continues to claim that she was acting on behalf of the Employer and acting against the organization of the Union. The Union withdraws its claim, without prejudice, that she was terminated and hired before the decertification vote.
8. Melanie Evans, an employee and a member of the bargaining unit, repeatedly questioned employees as to how they were going to vote. She did this at Bob Lynn's request. She would regularly report the results back to Bob Lynn. This occurred during the time of the lead up to the second vote on October 24, 2011, on the partial decertification for the pub. She spoke to Wayne Richards and Jamie Ayotte.
9. At the time of the second vote, there were at least five individuals present at the pub who regular pub employees had never seen before. These were added by the employer for the purpose of insuring a vote against the Union. Ms. Ayotte saw five individuals at the second decertification vote that she had never seen. The employees that the employer had hired for the purposes of the vote were Abdullah Al-Ani, Thomas Cobleigh, Erickson Del Alcazar, Victoria LaRue, Howard Redford, Justine Sader, Raed, Mohammad, Andrea Nesdoly, Tacita, and Matthew Tang.

These individuals were hired in the Summer of 2011. Their start dates are as follows:

Abdullah Al-Ani — May 2011

Thomas Cobleigh — September 2011

Erickson Del Alcazar — September 2011

Victoria LaRule — August 2011

Howard Redford — August 2011

Justine Sader — August 2011

Andrea Nesdoly — September 2011

Mohammad was hired in or around June 2011

Matthew Tang was hired in or around July 2011

Tacita and Raed were hired between May — June 2011.

After the second vote, everyone in housekeeping was placed on-call.

10. Shannon Dickson was employed in housekeeping and hired in June 2011. She was told at the time by Bob Lynn and Cecilia Aldea when she was hired that she was hired as a no-voter and to report back on the existing staffs view of the Union. There was often three front desk staff on duty when only one was needed. On occasion they told her that they had been hired to sway the vote against the Union.

#### **Additional Union Particulars Further to Arbitrator Dorsey's Order**

11. Shannon Dickson was told by Bob Lynn and Cecilia Aldea at a meeting on or about June 23, 2011 that they were hiring her to "clear out" housekeeping and to get rid of the Union if necessary.

It was made very clear to Shannon Dickson by Bob Lynn that she was not to speak to the Union about these matters.

12. Shannon Dickson was made assistant head housekeeper instead of a head housekeeper so that she could still vote against the Union as a bargaining unit member. Otherwise, she could not as management. Head housekeeper is a management position. There was no head housekeeper in the Vacation Inn and Shannon Dickson reported to Bob Lynn.
13. Shannon Dickson heard from Bob Lynn that he would give shift hours to employees so that they would "vote the right way."
14. If reports came back to Bob Lynn on how someone was voting indicating support for the Union, he would reduce the hours of the employee. If an employee was unsure about how they were voting, Bob Lynn asked Shannon Dickson to bring the employee to his office. Bob Lynn then relayed to Shannon Dickson the discussions he had with the employees, which were that if the employees were to "vote the right way", the employees would have full-time employment at their Union wages. If the employee was supportive of the Union, Bob Lynn would tell

the employee that he/she is against the business and that he did not want disloyal employees. He had these meetings with employees before the second decertification vote in October.

15. Bob Lynn gave any front desk agent on duty the authorization to fire employees. These front desk employees were hired to sway the vote.
16. It is the Union's position, further to Bill Murphy's statement, that the Employer laid off the Pub employees because it was unsuccessful at decertifying the Union and because of the support for the Union from the Pub employees.

### **Employer Particulars Provided September 14, 2012**

#### Union Particulars Provided May 6, 2012

1. We deny that Mr. Murphy approached Ms. Ayotte at any time on or around the final decertification vote. Rather, Ms. Ayotte approached Mr. Murphy. Mr. Murphy denies that he told Ms. Ayotte that if the Union wasn't voted out, that the pub would close. Instead, when he learned that Ms. Ayotte was reporting this misinformation to others, he spoke to all staff on her shift, and advised them that Ms. Ayotte's information was inaccurate. He advised the employees that they had a right to choose on principle, whether to be members of the Union or not, and that there would be no ramifications from himself, whatever their choice.
2. We deny that the owners of the hotel directed Bob Lynn to hire Cecelia Aldea, or any other employee. We deny that the Employer or the General Manager, Mr. Lynn hired Ms. Aldea for the purpose of organizing and filing 2 decertification Petitions. The Employer is unaware of who organized or filed the Decertification Petitions. We deny that Ms. Aldea was acting as an agent of the hotel in any of her dealings with the Union or her co-workers in relation to the decertification.
3. The Employer has no knowledge of Ms. Aldea conducting polling of employees on company time, or her asking how employees were going to vote. In preparing its response to this statement of particulars, the Employer asked Ms. Aldea if she had done so, and she denied that she had. At no time did Ms. Aldea ever advise the Employer of any discussions she had had with other employees regarding their intentions in relation to the Decertification Application.
4. Representatives of the Employer have had conversations on numerous occasions with Theresa South to the effect that the owners had not purchased the property with the long term intent of operating a hotel. She was advised that given the substantial losses incurred by the Hotel, the owners were unwilling to also take on the liabilities of the past owners of the Hotel. Further, the Hotel explained that if the Hotel was going to invest the necessary monies to bring the Hotel to an acceptable level, it would not have sufficient funds to be able to

operate the Hotel if it was obliged to take on the liabilities of the previous owners. It also consistently remained the position of the Employer that pursuant to the Collective Agreement between the parties it did not have any legal liability to the Union or the employees for the debts incurred by the former owners of the Hotel.

5. It is the Employer's understanding that the Petition that was initiated by employees of the Hotel, was initiated following an April 11, 2012 meeting between Union representatives Theresa South and Jim Pearson and the employees of the Hotel and was responsive to the Union's discussion with its members of the Employer's position as described above.

#### Union Particulars Provided May 14, 2012

6. Our response to the allegations at paragraph 6 is noted above.
7. The Employer denies that Ms. Mackenzie acted at any time on the request of either Bob Lynn or Kitty Dang in relation to any efforts she made to oppose the Union. The Employer has no knowledge of Ms. Mackenzie speaking to staff, or soliciting their support for a decertification vote while being paid by the Employer.
8. The Employer denies that any questioning by Ms. Evans of her co-workers with respect to how they intended to vote in the decertification vote was done at the request of Bob Lynn, and denies that she "regularly" reported the results of any such discussions to Bob Lynn. On one occasion, on her own volition, she did report to Mr. Lynn her assessment of how employees in the pub and lounge would be voting. She did not do so at Mr. Lynn's request.
9. The Union had full access to the employee list, and hire dates at the time that the decertification vote occurred, and had an opportunity to challenge any votes of any employee it felt did not have a continuing interest in regard to the Certification. The Employer denies that it hired any employees for the purpose of changing the vote, rather it hired employees as needed for the purpose of operating the Hotel.

The Employer agrees that employees in the housekeeping and maintenance departments were placed on-call following the summer and shoulder season as is typical in the industry, due to the reduction in occupancy of the Hotel.

10. Shannon Dixon was hired by Mr. Lynn on the recommendation of Ms. Aldrea, as Ms. Aldrea had worked with Ms. Dixon at their former employer hotel. She was not advised by Mr. Lynn or Ms. Aldrea that she was hired as a "no" vote, and that was not the purpose for which she was hired. She was not instructed to report back, to the Employer or other employees nor did she do so.

The Employer denies that there was ever three people on shift on the front desk at any one time.



Additional Union Particulars, Further to Arbitrator Dorsey's Order

11. The Employer denies that either Bob Lynn or Cecelia Aldrea ever made the statement to Ms. Dixon as alleged.
12. The Employer denies that Ms. Dixon was made Assistant Head Housekeeper for the purpose of allowing her to vote against the Union. It was a requirement of her position that she perform bargaining Unit work.
13. The Employer denies that Mr. Lynn made the comments alleged, and all work was assigned in accordance with the Collective Agreement.
14. The Employer denies that employees' hours of work were affected based on any perception by management as to how they would vote in the Decertification Vote. All hours were assigned in accordance with the Collective Agreement. The Employer denies that Mr. Lynn had discussions with Ms. Dixon or any other employee as alleged at paragraph 14.
15. The Employer denies that Mr. Lynn gave any bargaining unit employee the authority to fire any employees. Mr. Lynn is the only individual authorized to hire or fire employees.

General Position of the Employer

It remains the Employer's position in this matter that the Union is not acting in good faith. The Union has raised particulars which are inaccurate, and which the Union could have determined were inaccurate by exercising appropriate due diligence.

It will also be our position that none of the particulars raised in this proceeding have been raised in a timely manner, and it continues to be our position that all issues raised by the particulars were issues that could, and should have been raised in response to the Decertification Application.

