

File No. 01-012

Decision No.

**IN THE MATTER OF AN APPLICATION FOR CERTIFICATION**

**BETWEEN:**

**PUBLIC SERVICE ALLIANCE OF CANADA**

**APPLICANT**

**AND:**

**CANADIAN CORPS OF COMMISSIONAIRES,  
NEW BRUNSWICK AND PEI DIVISION INC.**

**RESPONDENT**

**COUNSEL FOR THE APPLICANT  
COUNSEL FOR THE RESPONDENT**

**J. Gordon MacKay, QC.  
David W. Hooley, QC., and  
Alana P. Taylor**

**DECISION**

**Background**

An Application was filed with this Board on 24 July 2001 pursuant to subsections 12 and 13 of the *Labour Act, R.S.P.E.I. 1988 Cap L-1* and section 3 of the *Labour Act Regulations*, as amended, requesting the following relief:

The Applicants request the Board certify the Applicant as bargaining agent of the employees in the unit set forth as appropriate for collective bargaining. The Applicant in paragraph 6 of its application, in Labour Relations Board File No. 01-012, describes the unit as: "All commissionaires employed by the NB-PEI Division of the Canadian Corps of Commissionaires in the province of Prince Edward Island.

On 15 August 2001, a letter was received from the Public Service Alliance of Canada which had attached to it further membership evidence. Also received by the Board between 7 August 2001 and 16 August 2001 were letters from various members of the proposed bargaining unit.

Dated and received 16 August 2001 was a letter from David W. Hooley, QC, Counsel for the Respondent, setting out the issues the Respondent wished to raise and that the complete Reply would be filed on 7 September 2001.

A Reply and Intervention were filed on 7 September 2001. The Intervention, filed pursuant to section 9 of the *Labour Act Regulations*, as amended, set out three (3) grounds for the Intervention, as well as alleging “material irregularities in the Union’s organizational campaign” and was signed by David W. Hooley, QC, Counsel for the Respondent.

The Reply, filed by the Respondent, among other things, set out five (5) bargaining units and alleged a total number of one hundred and forty three (143) employees.

There was a brief pre-hearing conference held immediately prior to the convening of the hearing on 7 November 2001.

### **Cases Considered**

1. *Royalguard Vinyl Co.* [1994] OLRB Rep. Aug. 1057

### **Statutes Considered**

1. *Labour Act, R.S.P.E.I. 1988 Cap. L-1*, sections 12 and 23
2. *Labour Act Regulations*

### **Texts Considered**

1. *Ontario Labour Relations Board Law and Practice*, Sack Mitchell Price, 3d., 3.163-3.169, pp. 3.85 - 3.89.2
2. *Canadian Labour Law* 2d, George W. Adams, 10.1340, p. 10-87

### **Preliminary Matters**

As indicated above, there was a brief pre-hearing conference held immediately prior to the Board convening on 7 November 2001. Following the introduction of the matter, and the representatives of the Parties and their respective Counsel, the Board heard a motion to amend the Application to reflect that the Respondents proper name was the “Canadian Corps of Commissionaires, New Brunswick and PEI Division Inc.” The motion was consented to by Counsel for the Applicant and the Board amended the pleadings accordingly.

The Board called for Preliminary matters and then heard opening statements from respective Counsel and it was indicated that there were a number of preliminary matters which would be directed to whether or not the Corps of Commissionaires is considered a “employer” and whether the appropriate forum for the hearing of the matter is before the Labour Relations Board of Prince Edward Island or before the Canada Labour Board.

The Board concurred with Mr. Hooley’s ascertain that the Board should hear evidence on the preliminary matters and sworn as a witness in regards to the preliminary matters was Commandant Derrick W. Hunter of the Canadian Corps of Commissionaires. Commandant Hunter commenced giving testimony and commenting on the documents filed in support of the Reply. In the course of his testimony, it was brought to the Board’s attention that, given the allegations of the employer of the size of the bargaining unit and the numbers of members in support of being represented by the

Applicant, there might be an issue of “majority of support” being brought into question. The Board adjourned while the CEO and the respective Parties and their Counsel conferred on that specific point. The hearing reconvened and there was a joint motion made by Counsel, in the interest of efficiency of time and effort and expense, that the hearing be adjourned so that the matter of the bargaining unit size and the majority of support issues be explored further through the CEO, the Parties and their respective Counsel. The Board granted the motion and adjourned the matter, reiterating that the Board considered itself to remain seized of the matter and that the adjournment was granted pending the exchange of information through the CEO of the Board and with the cooperation of the respective parties through their counsel.

The hearing of the matter was reconvened on 3 January 2002 and the Panel of the Board was reconstituted in that an original member, Mr. Brian Moriarity, could not continue for health reasons, and Board member, Mr. Ray McBride, was installed as a member of the current Panel with the consent of the Parties. The Parties went on record as concurring that the evidence presented to date, if the need arose, would have to be reintroduced.

The results of the conferences and correspondence between the Counsel of the respective Parties and the CEO of the Board and the implications of the investigation by the CEO were discussed by Counsel and the Board.

Still on the basis of dealing with Preliminary Matters, there were essentially two (2) issues on which the Board was prepared to hear evidence, submissions and consider by way of preliminary matters prior to considering the matter on its merits. The first issue was the matter of the organizing drive at the Fisheries and Oceans/Canada Coast Guard site in Charlottetown, and the other issue related to the appropriateness of the bargaining unit which persons were to be included for purposes of the “majority of support” considerations.

The Parties indicated to the Board what would constitute the evidence upon which they would be relying in regards to the issue of the organizing drive held at the Fisheries and Oceans/Canadian Coast Guard Base in Charlottetown. They made submissions based on that evidence and the Respondent, Corps of Commissionaires, sought to have the Application declared a nullity or, in the alternative, that the employees at that site be excluded from the declaration in regards to majority of support. They then turned their attention to the issue of a majority of support.

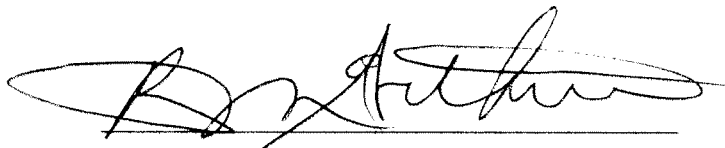
There was a list of some thirty (30) names which the Respondent contended were eligible members to the Bargaining Unit. Of that list of thirty (30) names, in a conference between Counsel for the Parties and the CEO of the Board, during an adjournment, there were ten (10) names conceded by the Applicant as being appropriate to be included in the Unit, and ten (10) names conceded by the Respondent as being inappropriate for inclusion in the total membership of the Bargaining Unit.

At the resumption of the hearing, Mr. Donald Doucette, Area Supervisor for the Corps of Commissionaires, New Brunswick and Prince Edward Island Division Inc., was sworn and gave evidence with respect to the ten (10) named individuals and their respective duties and involvement in regards to the activities of the Corps of Commissionaires. Mr. Doucette was cross-examined by Counsel for the Applicant and the hearing was adjourned on the basis that the Board consider the evidence and submissions presented in regards to the majority of support and the issue of the appropriateness of the organizing activities at the Fisheries and Oceans/Canadian Coast Guard Base, Charlottetown.

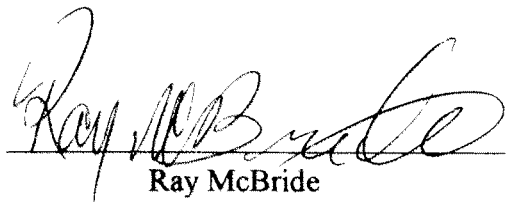
## Decision

The Board carefully considered the evidence submitted in regards to the inclusion of the remaining list of ten (10) persons potentially eligible for inclusion in the Bargaining Unit. Following that consideration, the Board has reached the conclusion that there are a number of members of that remaining list of ten (10) names who are in fact eligible, and that, therefore, as of the time of the Application, the appropriate size of the Unit was a number in excess of that alleged by the Public Service Alliance of Canada. The membership evidence filed by the Applicant and available to the Board would indicate that, among the membership of the unit appropriate for collective bargaining purposes, the Public Service Alliance of Canada does not have a majority of support within the Unit. Therefore the Board must find that the Application filed with the Board on 24 July 2001 be deemed a nullity, and rules accordingly.

In view of its findings in regards to the issue of "majority of support" issue, the Board need not rule in regards to the issue of the appropriateness of the organizing drive by the Public Service Alliance of Canada at the worksite of the Fisheries and Oceans/Canadian Coast Guard Base in Charlottetown.



Robert R. MacArthur  
Chair

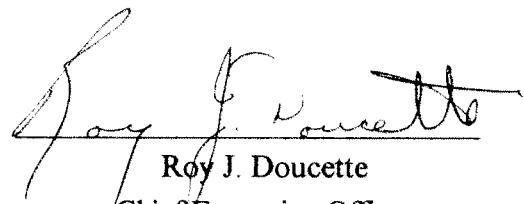


Ray McBride  
Member



Brendon McGinn  
Member

This Decision made by the Prince Edward Island Labour Relations Board on the 23<sup>rd</sup> day of January, 2002, and issued under the hand of its Chief Executive Officer on the 13<sup>th</sup> day of February, 2002.



Roy J. Doucette  
Chief Executive Officer