

File No. ⁰³ 00-003 and 03-004

Decision No.

**IN THE MATTER OF AN APPLICATION UNDER SECTION 4 OF THE ACT
(APPLICATION FOR RECONSIDERATION)**

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.
Karen A. Campbell and
P. Alanna Taylor**

DECISION

Background

The Respondent's Application for Reconsideration was received by the Board on December 16, 2003. The grounds of this Application for Reconsideration are set out in paragraph 8 thereof as being:

a. The Board in its decision failed to fully consider and give proper weight to the representations and testimony made on behalf of the Corps, and specifically with respect to the actual functions of the clients at each job site and thereby erred in its finding that the Corps was an "Employer" within the meaning of the Labour Act.

b. The Board failed to properly consider the duties, responsibilities and job descriptions of the Commissionaires at each job site and erred in its application of the law in determining whether the Commissionaires were "vital, essential and integral" to the fundamental workings at each site, and therefore, erred in determining that the Federal Commissionaires do not come under the jurisdiction of the Canada Labour Board and the Canada Labour Code.

The hearing of this Application for Reconsideration was conducted on December 17, 2003.

The Applicant filed an Application for Certification with the Board on March 19, 2003 and the Respondent filed an Unfair Labour Practice Complaint on April 11, 2003. The parties filed respective responses to these initiating documents. The matters were then consolidated on June 16, 2003.

The details of the various documents that were filed with the Board are set out in the Board's decision dated the 24th day of November 2003.

The Board heard four days of hearings in regard to the Application for Certification and the Unfair Labour Practice Complaint noted above. Written submissions were also received the Board in respect to certain preliminary matters that the parties alleged went to the Board's jurisdiction.

The Board rendered a decision, dated November 24, 2003, wherein it held that the Respondent is an employer as defined in the *Labour Act*, and it further held that the federal government job sites/details do come under the jurisdiction of the Prince Edward Island Labour Relations Board.

It is from this decision of the Board that the Respondent has filed the Application for Reconsideration.

Cases Considered

1. *Trigen Energy Canada Inc. and Trigen PEI v. The International Brotherhood of Electrical Workers, Local 1432* (unreported, 23 June 1999, Prince Edward Island Labour Relations Board);

Statutes Considered

1. *Labour Act, R.S.P.E.I. 1988 Cap. L-1*, Sections 3(11), 3(12), and 4.
2. *Labour Act, Regulations* (EC 521/71) Sections 18.

Texts Considered

1. *Ontario Labour Relations Board Law and Practice*, Sack and Mitchell, (Toronto, Butterworths 1985), para 9.4.

Evidence and Argument

At the hearing on December 17, 2003, neither party submitted any evidence. Ms. Campbell, counsel for the Respondent reiterated the Respondent's position as outlined in the Application for Reconsideration. Ms. Campbell proceeded with oral argument in support of each of the two grounds set out in the Application. She made detailed representations with respect to each aspect of the Board's decision in regards to each of the two issues addressed in the Board's decision. Ms.

Campbell also made submissions on each of the areas of the decision where the Respondent believed the Board had erred.

Counsel on behalf of the Applicant responded with oral argument, relying on the legislation and on an excerpt from *Ontario Labour Relations Board Law and Practice*, Sack and Mitchell, in regards to the test to be employed by the Board in determining whether it should exercise its discretionary powers under the reconsideration provisions of the legislation. He took the position that the Board had not erred in its decision and that the Respondent had failed to meet the statutory test on reconsiderations for an exercise of the Boards's discretionary powers.

In rebuttal, Ms. Campbell responded to the Applicant's submissions and submitted that the Board was indeed possessed of a sound basis for an exercise of its discretionary powers to reconsider its decision.

Issues

The issue before the Board in this Application is whether it should exercise its discretionary powers granted under Section 4 of *Labour Act*, and Section 18 of the *Labour Act Regulations* to reconsider the decision the Board made on November 24, 2003.

Decision

By way of a preliminary matter, at the hearing on December 17, 2003, the Board granted the motion that the matters of the certification application and unfair labour practice complaint are adjourned for a date to be fixed pending the ruling of the Prince Edward Island Supreme Court on the Respondent's application for a stay of proceedings pending the hearing of the Judicial Review of the November 24, 2003 decision of the Board.

The Board has given careful review and consideration to the very able submissions of counsel in regards to this Application for Reconsideration.

The Board is empowered by Section 4(1) of the *Labour Act* as follows:

(1) ... but nevertheless the board may at any time, if it considers it advisable to do so, reconsider any decision, interim order, order, direction, declaration or ruling made by it and vary or revoke any such decision, order, direction, declaration or ruling.

As the Board has stated in *Trigen Energy Canada Inc. and Trigen PEI v. The International Brotherhood of Electrical Workers, Local 1432* (unreported, 23 June 1999, Prince Edward Island Labour Relations Board), the exercise of these powers are to be considered in light of the "three (3) part threshold test" which is set out in Section 18 of the *Labour Act, Regulations*, to the effect that:

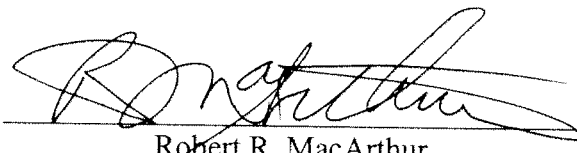
Where it appears that the Board has made a decision in ignorance of some material fact, or by reason of some technical irregularity, or if there is good reason for the Board doing so, the Board may entertain an application to reconsider a decision or order made by it under the Act.

In the case before it the Board finds that there has been no evidence presented nor argument that has been presented that would establish that the Board acted in ignorance of some material fact.

The Board also finds that there is no basis upon which the Board can conclude that there exists some technical irregularity, as contemplated in the enabling legislation, that would merit a reconsideration pursuant to Section 4 of the *Labour Act*.

Turning to the third leg of the threshold test, the Board is not moved to find that in the circumstances of this case there is any “good reason” for an exercise of its discretionary power to embark on a reconsideration of its decision of November 24, 2003. As with the exercise of any discretionary power, the Board clearly is mandated to do so only in the appropriate circumstances. The Board cannot find that the submissions of the Respondent have satisfied this third aspect of the threshold test. Following its careful consideration of all the circumstances of this case, the Board finds that there is no “good reason” that presents itself that will allow for the exercise those discretionary powers in this instance.


In summary, the Board finds that this Application for Reconsideration must be denied.. The Board rules accordingly.



Robert R. MacArthur
Chair

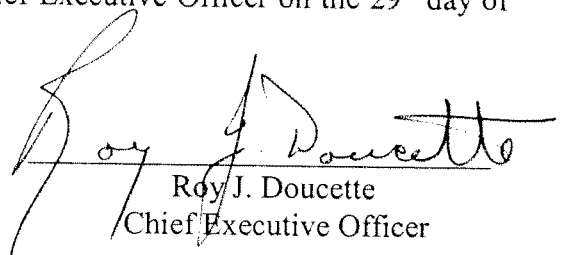


Ray McBride
Member



Brendon McGinn
Member

This Decision made by the Prince Edward Island Labour Relations Board on the 29th day of March, A.D., 2004, and issued under the hand of its Chief Executive Officer on the 29th day of March, A.D., 2004.



Roy J. Doucette
Chief Executive Officer