



File No. ⁰³~~00~~-003 and 03-004

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

DECISION

Background

The Applicant filed an Application for Certification on March 19, 2003, pursuant to Subsections Sections 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 that the Prince Edward Island Labour Relations Board ("the Board") certify the Applicant as bargaining agent of the employees in the unit being set forth as appropriate for collective bargaining purposes. The Applicant, in paragraph 6 of its Application, 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.*"

The Respondent filed a Reply to the Application for Certification on April 11, 2003.

Further, the Respondent also filed an Unfair Labour Practice Complaint on April 11, 2003. The Applicant filed its response to the Complaint on April 22, 2003. These two 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 by 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 had filed the Application for Reconsideration. The Respondent's Application for Reconsideration was received by the Board on December 16, 2003. The hearing of this Application for Reconsideration was conducted on December 17, 2003. The Board's decision on the Application for Reconsideration was issued on March 29, 2004.

The Respondent brought an Application for Judicial Review and on August 24, 2004 the Prince Edward Island Supreme Court Trial Division issued the decision of Mr. Justice Cheverie upholding the Board's decision of November 25, 2003

The Board had scheduled October 22, 2004 as the date for resumption of the hearing into the Application for Certification and the Unfair Labour Practices Complaint and notice was provided to the parties.

In the meantime the Respondent appealed the decision of Mr. Justice Cheverie dated August 24, 2004 to the Prince Edward Island Supreme Court Appeal Division and also brought to the Court an Application for a Stay of Proceedings of the matters before the Board. The decision of the Appeal Division dated October 18, 2004, denied the stay of proceedings, but the Appeal Division did set an early date for the hearing of the Appeal. The Appeal was scheduled for December 1, 2004, and it was left to the discretion of this Board as to how the Board would proceed.

The Board proceeded to hear the Application for Certification and the Unfair Labour Practices Complaint on Friday, October 22, 2004.

On that date, the Respondent did not appear, either personally or through counsel. Mr. J. Gordon MacKay, Q.C., solicitor for the Applicant advised the Board that he and Karen Campbell, the solicitor for the Respondent, had had numerous conferences, both by telephone and in person and that Ms. Campbell had advised Mr. MacKay that:

- she would not be attending;
- she was not intending to proceed further in respect of the allegations outlined in the Unfair Labour Practice Complaint;
- she was not intending to present any evidence in relation to the Application for Certification, but Mr. MacKay indicated that he and Ms. Campbell had agreed that the member of the Respondent holding the position of Area Manager would be excluded from the bargaining unit.

The Board decided to proceed with the hearing on Friday, October 22, 2004. The Board was satisfied that both parties had received notice of the hearing. The Respondent had chosen not to appear and make further submissions and/or present additional evidence to the Board. Subsequent to the hearing, the Board received written confirmation from Ms. Campbell confirming the comments made by Mr. MacKay in relation to her discussions with him. Ms. Campbell confirmed in writing to the Board that the Respondent had no further submissions to make.

Statutes Considered

1. *Labour Act, R.S.P.E.I. 1988 Cap. L-1*, sections 12 and 13.
2. *Labour Act, Regulations*,(EC 521/71) section 3.

Evidence

At the hearing on October 22, 2004, Mr. J. Gordon MacKay, QC., solicitor for the Applicant, recounted that he and Ms. Karen A. Campbell, solicitor for the Respondent, have had numerous conferences both by telephone and in person. He indicated to the Board that the Respondent's solicitor has advised that the Respondent is entirely satisfied with the explanation the Applicant has provided in respect to the alleged unfair labour practices and intend to proceed no further on those allegations.

Mr. MacKay also indicated that the parties had agreed that those members of the Respondent holding the position of Area Manager would be excluded from the bargaining unit.

Mr. MacKay tendered the sworn evidence of the Applicant that had been submitted with the Application for Certification.

Issues

The issues before the Board in this matter are:

- a. should the Unfair Labour Practice Complaint filed by the Respondent be upheld?
- b. has the Applicant demonstrated the necessary elements to enable the Board to grant the Application for Certification?

Decision

Unfair Labour Practices Complaint

In relation to the Unfair Labour Practice Complaint known as Board file number 03-004, the Board recently received correspondence from Karen Campbell requesting that the Unfair Labour Practice be withdrawn.

The Board permits the withdrawal of the Unfair Labour Practice Complaint. The Board finds that there is no basis upon which the Board could conclude that the Applicant has committed an Unfair Labour Practice against the Respondent.

Application for Certification

This Panel of the Board has thoroughly reviewed all of the evidence presented and the submissions advanced by the respective Parties in relation to the Application for Certification in relation to Board file number 03-003.

The Board has considered the application for certification and the supporting evidence and submissions in light of and pursuant to sections 12 and 13 of the *Labour Act* and section 3 of the *Regulations of the Act*. The Act reads:

12. (1) A trade union claiming that a majority of employees of an employer in a unit that is appropriate for collective bargaining wish that the trade union be certified as bargaining agent on their behalf may, subject to the rules of the board and in accordance with this section, apply to the board to be certified as bargaining agent of the employees in the unit.

(2) Where no trade union is certified as bargaining agent for any of the employees in the unit and the employees are not bound by a collective agreement, the application, subject to subsection (7), may be made at anytime.

(3) Where a trade union is certified as bargaining agent for any of the employees in the unit, but no collective agreement binding on such employees has been entered into, the application may be made at anytime after ten months from the date of certification, but not before, without the consent of the board.

(4) Where a collective agreement binding on any of the employees in the unit is in force and the agreement is for a term of not more than two years, the application may be made only after the commencement of the last two months of the term of the agreement.

(5) Where a collective agreement is in force and the agreement is for a term of more than two years, the application may be made only after the commencement of the twenty-third month of the term and before the commencement of the twenty-fifth month of the term and during the two-month period immediately preceding the end of each year of the term that the agreement continues to operate thereafter or after the commencement of the last two months of the term, as the case may be.

(6) Where a collective agreement referred to in subsections (4) or (5) provides that it will continue to operate for a further term or successive terms if neither party gives to the other notice of termination or of its desire to bargain with a view to the renewal of the agreement or to the making of a new agreement, the application may be made during the further term or successive terms only during the last two months of each year of such further term or successive terms, or after the commencement of the last two months of such term or successive terms that it so continues to operate, as the case may be.

(7) Where a collective agreement binding on any of the employees in the unit has expired and notice has been given pursuant to section 23, but a new collective agreement has not been entered into, no application for certification as bargaining agent of any of the employees in the bargaining unit defined in the collective agreement, whether the bargaining agent named in such collective agreement is or is not certified, shall be made until ten months after the expiration of the said agreement, except with the consent of the board.

(8) Notwithstanding subsection (7), no such application shall be made without the consent of the board during a lawful strike or lockout.
R.S.P.E.I. 1974, Cap. L-1, s.11.

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.

(2) The board may, before certification, either to make the unit appropriate for collective bargaining or for other good reason, include additional employees in or exclude employees from the unit.

(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.

(4) Where the board has taken a representation vote under this Act and a majority of eligible employees in the unit appropriate for collective bargaining vote in favour of the applicant union, the board may determine that a majority of the employees in the unit wish the applicant union to be certified as bargaining agent of such employees.

(5) If the board is satisfied that a majority of the employees in a unit appropriate for collective bargaining wish the applicant trade union to be certified as bargaining agent of such employees, the board shall certify the trade union as the bargaining agent of the employees in that unit.

(6) In determining what number of employees constitute a majority of the employees of a unit pursuant to subsection (5), the board may consider any increase in the number of employees in the bargaining unit after the application was made, and the board may consider any anticipated increase in the number of employees in the bargaining unit.

(7) If the board is not satisfied that the applicant trade union is entitled to be certified under this section, it shall dismiss the application and may designate the length of time that must elapse before the same applicant may make a new application.

(8) In determining the number of eligible employees for the purpose of subsection (4), employees who do not cast their ballots shall not be counted as eligible employees.

R.S.P.E.I. 1974, Cap. L-1, s.12; 1988, c.36, s.1.

The Regulations at section 3 read:

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

(2) 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.

(3) The material filed by the applicant trade union under clauses 2(a) and (b) shall be for the information of the Board only and shall not be available to or open for inspection by any other party to the proceedings.

(4) A person shall be deemed by the Board to wish that the applicant trade union be certified as bargaining agent on his behalf if at the date of application

(a) he 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) he has signed a document stating that he wishes the applicant trade union to be certified as bargaining agent on his 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)

In regard to Section 3, the Board is satisfied that the appropriate documentation was filed with the Board to give the Board jurisdiction to hear the matter.

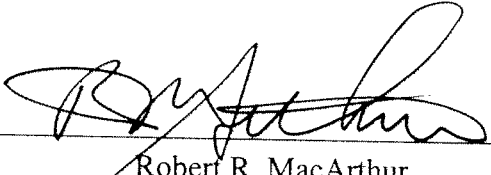
In relation to the Application for Certification, the Board must address the following points, namely:


1. The appropriateness of the bargaining unit;
2. The composition of the unit;
3. Whether there is a majority of the employees in the unit; and
4. Whether there are grounds for granting the relief sought.

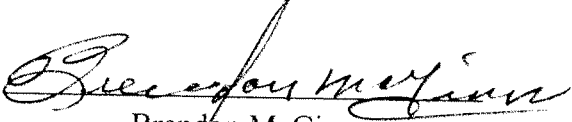
The Board is satisfied that the unit is appropriate for collective bargaining purposes, provided that the Area Manager of the Respondent is excluded, as requested by Mr. MacKay. Since the hearing, the Board has received confirmation from Ms. Campbell, counsel for the Respondent, that her client is in agreement with this description of the unit. The evidence discloses that the description of the unit as set out in the Application for Certification, as modified by the joint submissions of Mr. MacKay on October 22, 2004, and Ms. Campbell on November 19, 2004, addresses the first two listed considerations.

The Board has reviewed the membership evidence filed with the Application for Certification and concludes that there is a clear majority of the employees of the Respondent who desire the Applicant to represent them for collective bargaining purposes.

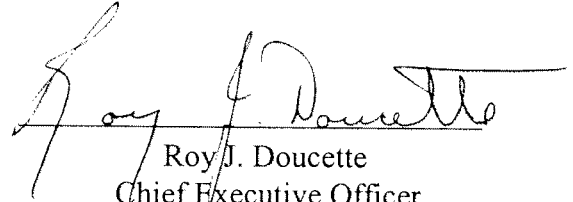
Accordingly, the Board is satisfied that the unit is appropriate for collective bargaining, that a majority of employees of the Respondent employer wish the Applicant to be certified to represent them for collective bargaining purposes. The Board finds that all requisite grounds exist to empower the Board to grant the Applicant the Certification Order requested. Accordingly the Board will issue a Certification Order to that effect and the Board so rules.


Robert R. MacArthur
Chair


Ray MacBride
Member


Brendon McGinn
Member

This Decision made by the Prince Edward Island Labour Relations Board on the 22nd day of October, A.D., 2004, and issued under the hand of its Chief Executive Officer on the 23rd day of December, A.D., 2004.



Roy J. Doucette
Chief Executive Officer