



File No.

Decision No.

006-014

**IN THE MATTER OF
AN APPLICATION UNDER SECTION 39 OF THE PRINCE EDWARD ISLAND
LABOUR ACT, R.S.P.E.I. 1988 CAP. L-1, (SUCCESSOR RIGHTS)**

BETWEEN:

ISLAND EMS INC.

APPLICANT

AND:

**NEIL'S AMBULANCE SERVICE INC., KINGS COUNTY
NEIL'S AMBULANCE SERVICE INC., ROYAL AMBULANCE
SERVICE LTD., WEST PRINCE AMBULANCE SERVICE
INC. and ROONEY AMBULANCE SERVICE**

RESPONDENT EMPLOYERS

**CANADIAN UNION OF PUBLIC EMPLOYEES, LOCAL 3324,
PRINCE EDWARD ISLAND UNION OF PUBLIC SECTOR
EMPLOYEES and INTERNATIONAL UNION OF
OPERATING ENGINEERS, LOCAL 942**

RESPONDENT UNIONS

COUNSEL FOR THE APPLICANT

Mr. John K. Mitchell,
Q.C.

**REPRESENTATIVE FOR THE RESPONDENT NEIL'S
AMBULANCE SERVICE INC., KINGS COUNTY**

Mr. Gerad Holland

**REPRESENTATIVE FOR THE RESPONDENT NEIL'S
AMBULANCE SERVICE INC.**

Mr. Doug MacDonald

**REPRESENTATIVE FOR THE RESPONDENT ROYAL
AMBULANCE SERVICE LTD.**

Mr. Jed Burt

**COUNSEL FOR THE RESPONDENT WEST PRINCE
AMBULANCE SERVICE INC.**

Mr. Steven Ellis

**REPRESENTATIVE FOR THE RESPONDENT ROONEY
AMBULANCE SERVICE**

Mr. Claude Gavin

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Mr. Jacques Sirois

**REPRESENTATIVE FOR THE RESPONDENT PRINCE
EDWARD ISLAND UNION OF PUBLIC SECTOR
EMPLOYEES**

Mr. Mike Doyle

**REPRESENTATIVE FOR THE RESPONDENT
INTERNATIONAL UNION OF OPERATING ENGINEERS,
LOCAL 942**

Mr. Ted Crockett

DECISION

Background

The Application of Island EMS Inc., dated the 28th day of March, 2006, was filed with the Labour Relations Board of Prince Edward Island under Section 39 of the *Labour Act, R.S.P.E.I. 1988, Cap L-1* (Successor Rights). The Applicant sought a declaration that the employees affected constitute one appropriate bargaining unit; the holding of a representative vote; a determination or assistance in determining seniority dates for all employees in any consolidated bargaining unit, and that the Board reserve jurisdiction to deal with any further matters which may arise as a result of the consolidation of ambulance services throughout Prince Edward Island.

The letters of the Chief Executive Officer of the Board, dated the 30th day of March, 2006, to all parties, advised of the Application and, through the Form 2 Notice of Fixing Terminal Date of even date, set Friday, the 21st day of April, 2006, as the terminal date of this application.

The Reply filed on behalf of the respondent International Union of Operating Engineers, Local 942, received on the 20th day of April, 2006, agreed with the creation of one bargaining unit and the holding of a representative vote. It did submit that the description of the appropriate bargaining unit as set out in the application was inadequate and should be determined by the Board. It requested that the Board order a campaign period of not less than two calendar weeks during which the respondent unions would have unrestricted access to all affected employees; that the actual vote be held simultaneously over a period of not less than two calendar days at each work location; that voting hours be established on each of the two days; and that affected employees be given the option of voting at any polling station established by the Board in this process. As to seniority dates, it took the position that this matter would best be left to the consideration of the employer and the successful respondent union, subject then to intervention only as the Board deems necessary. It advised for caution on the part of the Board in terms of reserving jurisdiction and non-interference in matters more appropriate for collective bargaining. It also commented on the date of the application and whether Mr. Jed Burt, former owner of Royal Ambulance Service Ltd., and a current unrepresented employee of the Applicant, would be entitled to third party notice.

On the 21st day of April, 2006, the Respondent, Canadian Union of Public Employees, hand delivered its Reply and conceded that Island EMS Inc. is the successor employer, there was notice of intermingling of employees, and that a representation vote should be conducted. It cited three submissions in support of the request that the Board make arrangements to conduct the representation vote as soon as reasonably possible. Also, it asked that the Board request a meeting

of all the Respondent Unions with the Board's Chief Executive Officer to settle all matters outstanding in respect to the conduct of the representation vote. In conclusion it proposed that the voters' list should be comprised of all employees of the five (5) predecessor employers who were employed as emergency medical technicians as of the date of application (March 30, 2006) and to continue to be employed by Island EMS Inc. as of the date of the representation vote.

The Prince Edward Island Union of Public Sector Employees filed its Reply to the Application on the 21st day of April, 2006, in which it agreed that Island EMS Inc. is the successor employer, there was notice of intermingling of employees (with one employee being excluded), the formation of a single bargaining unit and that a representation vote should be conducted.

There were conferences and correspondence as between the parties and the Chief Executive Officer of the Board and Form A, Notice of Representation Vote for a vote by secret ballot on the 29th and 30th days of May, 2006, by the Returning Officer of the Labour Relations Board, and the Voters' List issued by the Chief Executive Officer, dated the 17th day of May, 2006, was agreed to and signed by a representative of each respondent union.

The vote was conducted over the two appointed days in six voting bases across the province in Alberton, O'Leary, Summerside, Charlottetown, Montague and Souris. The Report of Returning Officer (Representation Vote) Labour Relations Board, dated at Souris on the 30th day of May, 2006, is signed by the Returning Officer, Mr. Roy J. Doucette, and representatives of the Applicant Employer and each of the Respondent Unions.

Cases Considered

1. ***I. B. E. W., Local 1432 v. Trigen PEI/Trigen Energy Canada Inc.***, [11 January 1999] P.E.I.L.R.B. No. 97-055 (Decision on Section 39 Successor Rights);
2. ***Queens Region Health & Community Services v. Canadian Blood Services and Union of public Sector Employees, Intervenor***, [22 October 2001] P.E.I.L.R.B. No. 00-008 (Decision on Section 39 Successor Rights);

Statutes Considered

- (a) ***Labour Act***, R.S.P.E.I. 1988, Cap. L-1, Sections 4, 7 and 39.

Evidence

The written evidence before the Board on these matters is in the form of sworn affidavit evidence in the Application and in the Reply of the respondent International Union of Operating

Engineers, Local 942, and in the letters of reply from the Canadian Union of Public Employees and Prince Edward Island Union of Public Sector Employees filed with the Board, as well as the Report of the Returning Officer (Representative Vote) dated the 30th day of May, 2006.

Issues

The issues that are to be considered and decided by this Board are listed as follows:

1. Whether Island EMS Inc. is an "employer" as defined in the *Act*;
2. Whether the proposed unit is appropriate for purposes of collective bargaining;
3. If there are affirmative findings on these two issues, do successor rights apply such that EMS Inc. is a successor employer to the five (5) previous employers, and which respondent union possesses the majority of support of the employees of the appropriate unit; and
4. Whether there are grounds for granting the relief sought.

Preliminary Matters

The Board, at the commencement of the deliberations, considered the matters of the date of application and whether third party notice to Mr. Jed Burt is required in the circumstances. The Board concluded that the appropriate date of the Application is the 30th day of March, 2006 and no amendment of the Application is required. Further, it is found that no third party notice to the former owner of Royal Ambulance Service is required.

Decision

The available evidence has been thoroughly reviewed and given careful consideration by this Panel of the Board. The particular submissions advanced by the respective Parties in relation to this Application for Successor Rights were each taken into account by the Board in reaching its conclusions.

The Law

This Application is brought pursuant to the provisions of Section 39 of the *Act* which states:

- 39. (1) Where an employer sells, leases or transfers or has agreed to sell, lease or transfer his business or the operations thereof or any part of either of them, and*
- (a) either the employer or the purchaser, lessee or transferee or both of them is a party to or is bound by a collective agreement with a bargaining agent on behalf of any employees affected by such sale, lease or transfer;*
 - (b) one or more bargaining agents have been certified as bargaining agent for any such employees;*
 - (c) one or more trade unions have applied to be certified as bargaining agent for any such employees; or*

(d) one or more bargaining agents have given or are entitled to give notice under either section 21 or section 23 with respect to any such employees, unless and until the board otherwise directs, such collective agreement, certification, application, notice or entitlement to give notice continues in force and is binding upon such purchaser, lessee or transferee.

(2) Any such employer, purchaser, lessee or transferee, or any such bargaining agent or trade union may apply to the board for the resolution of any question or problem that, as a result of such sale, lease or transfer, has arisen or may arise with respect to any such collective agreement, certification, application, notice or entitlement to give notice.

(3) Upon such application being made, the board shall, by order, make such award, give such direction, or take such other action, as in its discretion the board considers appropriate, to resolve any such question or problem and, without restricting the generality of the foregoing, may by such order or subsequent order

(a) amend or rescind to such extent as the board considers necessary or appropriate any such collective agreement;

(b) revoke or amend any such certification or amend any such application for certification;

(c) modify or restrict the operation of any such notice or entitlement to give notice;

(d) determine whether employees affected constitute one or more appropriate bargaining units;

(e) if more than one collective agreement is to continue in force, designate which employees are to be covered by such agreements;

(f) modify or restrict the operation or effect of any provision of any such collective agreement and define the rights with respect thereto of any employees affected by such sale, lease or transfer;

(g) declare which trade union shall be the bargaining agent for such employees; and

(h) interpret any provision of any collective agreement.

(4) Until the board has disposed of any application under subsection (3), such purchaser, lessee or transferee, notwithstanding any other provisions of this Part, shall not be required to bargain with any such bargaining agent with respect to employees to whom the application relates.

(5) Where any application is made under this section, the board may make or cause to be made such examination of records or other inquiries and may hold such hearings and take such representation votes as it considers necessary and prescribe the nature of evidence to be furnished to the board.

(6) Where an employer who is a party to or is bound by more than one collective agreement reorganizes or intends to reorganize his operations so that employees covered by separate collective agreements are intermingled or will be intermingled, the board may, on application by such employer or any bargaining agent party to any such collective agreement, exercise the powers conferred on the board by this section and the provisions of this section shall apply.

(7) Where two or more municipalities are amalgamated, united, or otherwise joined together, or all or part of one such municipality is annexed, attached, or added to another such municipality, the provisions of this section apply. R.S.P.E.I. 1974, Cap. L-1, s.38.

Under the provisions of Part I of the *Act*, Industrial Relations, Sections 7 reads:

7. (1) *In this Part*

(a) *"bargaining agent" means a trade union that acts on behalf of employees*

(i) in collective bargaining, or

(ii) as a party to a collective agreement with their employer, and includes a council of trade unions that has been vested with appropriate authority by any of its constituent unions to enable it to discharge the responsibilities of a bargaining agent;

(b) "certified bargaining agent" means a bargaining agent that has been certified under this Act and the certification of which has not been revoked;

... and ...

(i) "employer" means a person, firm or corporation employing more than one employee but does not include Her Majesty or any person, corporation, board, department or commission acting for or on behalf of or as an agent of Her Majesty; except that the Lieutenant Governor in Council may by order-in-council declare any person, corporation, board, department or commission acting for or on behalf of or as an agent of Her Majesty to be an employer within the meaning of this Part with respect to any group of employees designated in the order-in-council, whereupon with respect to the group so designated, the person, corporation, board, department or commission, as the case may be, shall be such an employer until the order-in-council is rescinded;

Findings of Fact

The Board finds that, on the basis of the concessions of fact and the Board's own appreciation of the evidence submitted, the Applicant, Island EMS Inc., is a transferee and an employer as contemplated under the provisions of Sections 39 and 7 of the *Act*.

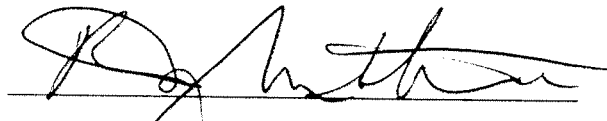
The results of the Representation Vote clearly establishes that the wish of the majority of the employees, in the unit which is appropriate for collective bargaining purposes, is that the bargaining agent for this bargaining unit be the Canadian Union of Public Employees.

Conclusion

The Board, in light of these findings of fact, must conclude that the first two issues are resolved in the affirmative.

Further, as to the third issue, the Board must also conclude that successor rights do apply, such that EMS Inc. is a successor employer to the five (5) previous employers, and the respondent union Canadian Union of Public Employees possesses the majority of support of the employees of the appropriate unit and is therefore declared to be the bargaining agent for that unit of employees.

There obviously exists a clear basis upon which the Board may grant the relief sought in this Application for Successor Rights. Therefor the Application is granted and the Board so rules.



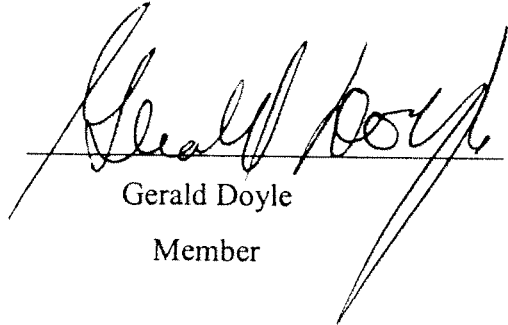
Robert R. MacArthur

Chair



Elizabeth MacFadyen

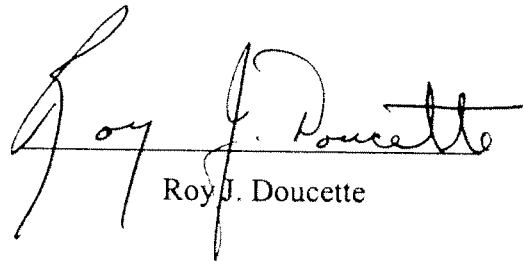
Member



Gerald Doyle

Member

This Decision made by the Prince Edward Island Labour Relations Board on the 21st day of July, A.D., 2006, and issued under the hand of its Chief Executive Officer on the 21st day of July, A.D., 2006.



Roy J. Doucette