



File No. App # 99-015

Decision No.

**IN THE MATTER OF AN APPLICATION UNDER SECTION 4(1) OF THE ACT
(APPLICATION FOR RECONSIDERATION)**

BETWEEN:

TOWN OF KENSINGTON

APPLICANT

AND:

CANADIAN UNION OF PUBLIC EMPLOYEES, LOCAL 1174

RESPONDENT

COUNCIL FOR THE APPLICANT

Mr. Paul J.D. Mullin, QC

**LEGAL AND LEGISLATIVE
REPRESENTATIVE FOR THE RESPONDENT**

Mr. James Stanley

DECISION

Background

An Application for Reconsideration was brought by the Applicant, the Town of Kensington, on 8 September 1999. That matter was heard on 15 February 2000, in Charlottetown, Prince Edward Island. The decision of this Board was issued on 8 March 2000. The final paragraph of that decision summarizes the ruling of the Board as follows:

*In conclusion, the Employer's application to have the matter reconsidered pursuant to Subsection 4(1) of the **Labour Act** and Section 18 of the **Regulations** is granted. The Board will convene a hearing to examine the central issue of the appropriateness of the Bargaining Unit and the issues that flow from that matter including the issues of whether essential and non-essential employees could be included in the same Bargaining Unit, and whether a Bargaining Unit of one member is conceivable under the provisions of the Prince Edward Island legislation.*

9. *Westar Timber Ltd and International Woodworkers of America, Local No. 1-405 and Certain Employees of Westar Timber Ltd and BC Federal of labour and Confederation of Canadian Unions, BC Council and Teamsters, Joint Council No. 36 and Business Council of British Columbia*, (1987), 14 C.L.R.B.R.(NS) 360, (Labour Relations Board of British Columbia, John Kinzie, Chair, Wayne Moore and Richard Longpre, Vice-Chairs)

10. *Bevan Bros. Limited v. Sheet Metal Workers International Association, Local 437*, (1999), PEILRB, File No. 99-003, R. MacArthur, Chair, J. Goodwin and G. Doyle, Members

Statutes Considered

Labour Act, R.S.P.E.I. 1988, Cap. L-1, Sections 7(1)(n), 12, 13(1), (2) and (3)(b)
Labour Act Regulations, R.S.P.E.I. 1988, Cap. L-1, Section (to be set out);

Texts Considered

Adams, *Canadian Labour Law (2d. ed.)*, pages 5 - 11.

Evidence

In addition to the evidence submitted with the original Application for Reconsideration, the Board received into evidence testimony of His Worship Mayor Gerald A. McCarville and the testimony of Constable Daniel Joseph Goguen. Tendered as Exhibit R-1 was the series of scheduling calendars for the Kensington Police Department covering the months of December 1999 through April 2000.

Issues

Given the consent of the Respondent, the Canadian Union of Public Employees, Local 1077, to the division of the original bargaining unit into two separate bargaining units as essential employees and non-essential employees, the remaining issues to be decided are: (a) whether there now exists an appropriate bargaining unit for the essential employees of the town; and, (b) is it appropriate for the taking of the representation vote in respect to the remaining members of the non-essential employees unit.

Argument

The Applicant requests a revocation of the original Certification Order. In respect to the bargaining unit for essential employees, it is argued that the town's only essential requirement is for two police officers, one of which is the Chief of Police and the other which is a full-time Constable to work and it is not required that there be a permanent part-time employee. It is submitted that it is not unusual to use casual employees and it shouldn't be imposed on the town that there be established a permanent part-time position. This would exceed the Board's jurisdiction. It is submitted that Section 12(1) speaks in the plural and Section 13(1) sets out the Board's obligation to consider whether the Unit in respect of which the Application is made is appropriate for collective bargaining. The Applicant also pointed out that Section 7(1)(n) defines Unit as a group (emphasis added) of employees. Counsel for the Applicant relied on the Board's

On 20 April 2000, the Board convened to hear further submissions from the parties as it relates to the above-noted issues. At the outset of the hearing, the parties advised the Board that the parties had consented to the Canadian Union of Public Employees, Local 1174, unit being split into two units being:

- 1) all employees of the Town of Kensington save and except the employees of the police department, the police chief and others otherwise excluded by the *Act*;
- 2) all police officers of the Police Department of the Town of Kensington save and except the Chief of Police.

An order will be issued from the Board to reflect that consensual amendment to the original Certification Order. The hearing of the matter in regards to the remaining issues proceeded.

Cases Considered

1. ***Trigen Canada Inc and Trigen PEI v. The International Brotherhood of Electrical Workers, Local 1432*** (unreported, 21 April 1999, Prince Edward Island Labour Relations Board);
2. ***Insurance Corporation of British Columbia and Canadian Union of Public Employees, Local 1695 and Office and Technical Employees' Union, Local 378 and British Columbia Government Employees' Union and Miscellaneous Workers', Wholesale and Retail Delivery Drivers' and Helpers' Union, Teamsters Local 351***, [1974] 1C.L.R.B.R.403 (BCLRB., P.C. Weiler, Chair);
3. ***Northwest Company Inc (Re)***, [1999](Nfld. L.R.B. D. No. 5, LRB File No. 712:2714 February 22, 1999, M. Cooper Vice-Chair);
4. ***RE Horton CBI, LTD. and United Steel Workers, Local 8473*** (1982), 4 L.A.C.(3d) 97, (Ontario, B.L. Adele, A. Sharp, I.H. McGowan);
5. ***Greyhound Lines of Canada Ltd.*** (1990), 91 CLLC 16, 003, CLRB, December No. 829, (Serge Brault, Vice-Chair, Calvin B. Davis and Michael Eayrs);
6. ***International Brotherhood of Electrical Workers, Local Union 254, Applicant and Corporation of the City of Calgary, Respondent and Canadian Union of Public Employees, Local 38, Intervenor***, [1989] Alta. L.R.B.R. 429, (A. Sims, Chair, L. Flannery and W. Flookes, Alberta Labour Relations Board);
7. ***Canadian Union of Public Employees (CUPE) v. Dalhousie (Town) (N.B.C.A.)***, [1990] N.B.J. No. 105, Action No. 198/89/CA, New Brunswick Court of Appeal (Hoyt, Rice and Ryan J.J.A.)
8. ***Sackville (Town) (Re)***, [1998] N.B.L.E.B.D. No. 38, New Brunswick Labour and Employment Board (E. McGinley, Q.C., Chair);

decision in *Bevan Bros. Limited*, to argue that it is inappropriate for a Unit of one to exist under the PEI legislation. The Ontario Act was also cited as authority that one member cannot constitute a Unit. The counsel for the Applicant also relied on Section 13(3)(b) of the legislation for its request that, in considering Sections 13(1) and (2), the Board has an implied authority to take a representation vote.

The Respondent took the position that the Unit of essential employees does not include one member so the issue of the appropriateness of a single-member Unit simply does not arise. It was submitted that the existing Unit consists of more than one employee in the essential services Unit and that it is an appropriate Unit for collective bargaining purposes. It was pointed out that the Ontario legislation prohibiting single-member units has since been amended. Even if the Board were to consider that the Unit consists of a single member, it was argued that it was possible for a Unit of one to exist under PEI legislation, the Act does not specifically prohibit the existence of a single-member Unit.

The Respondent also cited Section 9 of the legislation which stipulates that every employee has a right to be a member of Trade Union and to participate in the lawful activities thereof. It was noted that this provision of the Act is in the singular.

Decision

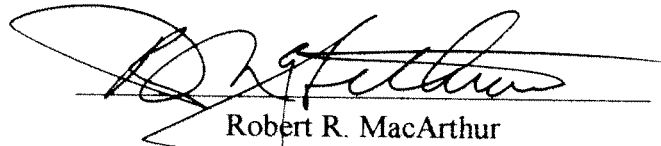
The evidence presented, the authorities cited, and the submissions of Counsel have all been carefully considered by the Board in reaching its decision in this matter.

On the basis of the consent of the parties, the Board will issue an amendment to the original Certification Order to separate the original bargaining unit into two Units, one consisting of essential employees and the other consisting of non-essential employees of the Town of Kensington.

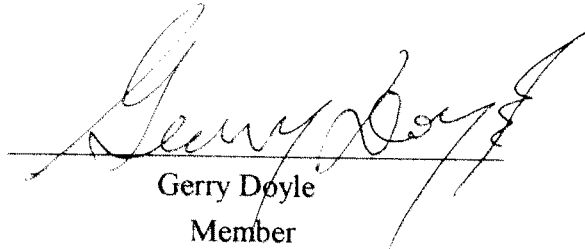
On the issue of the appropriateness of the Unit consisting of essential employees, the Board is of the belief that the primary concern is whether in fact the Unit consists of more than one employee. In this Board's estimation of all of the evidence presented, the Unit of essential employees does consist of more than one employee. Therefore, the Board need not go on to rule on the legal issue of whether a single member Unit is appropriate under the existing legislation in the Province in reaching this conclusion. On this Board's reading of the legislation, the Act does not prohibit part-time employees from being members of a bargaining unit. The evidence clearly establishes that the Unit, in this case, consists of more than one employee.

The Board places no particular legal implication upon the use of the term "casual" as it impacts upon the issuance or amendment of a Certification Order. The Board is of the belief that the inclusion of "part-time" or "casual" employees is a function of the collective bargaining process and more appropriately dealt with under the terms of a collective agreement.

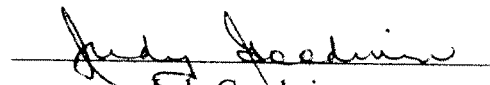
In regards to the Applicant's request for a representation vote, the Board declines to order such a vote. There are remedies open under the legislation to the employer and the employees who wish or do not wish to be represented by a local Union or included in a bargaining unit for collective bargaining purposes. The Board rules accordingly.



Robert R. MacArthur
Chair

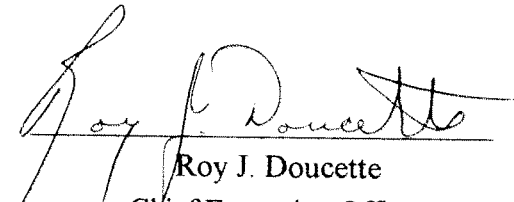


Gerry Doyle
Member



Judy Goodwin
Member

This Decision made by the Prince Edward Island Labour Relations Board on 26 June 2000 and issued under the hand of its Chief Executive Officer.



Roy J. Doucette
Chief Executive Officer