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Allison Matacheskie, Vice-Chair and Registrar

LABOUR RELATIONS BOARD
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RE: Vancouver Island Health Authority (West Coast General Hospital) -and- The Pulp, Paper and Woodworkers of Canada, Local No. 5 (Applicant) -and- International Union of Operating Engineers, Local No. 882 (Incumbent) (Application for Certification - Case No. 62712/11R)

To:. HEABC Attention: Paul Lim / Mark Slobin	Fax No: (604) 736-2715
To:. Kestrel Workplace Legal Counsel LLP Attention: Peter Shklanka	Fax No: (604) 736-6069
To:. Moore Edgar Olson Attention: Gurleen Singh Sahota	Fax No: (604) 689-4467
To: Employment Standards Branch, Nanaimo Attention: Katherine Wulf, IRO	DIRECT DIAL FAX

REMARKS:

BOARD DECISION ATTACHED – PLEASE DELIVER IMMEDIATELY.

****NOTE: FACSIMILE OPERATOR, PLEASE CONTACT THE ABOVE INTENDED RECEIVER AS SOON AS POSSIBLE. THANK-YOU.**

BRITISH COLUMBIA

LABOUR RELATIONS BOARD

"VIA FAX / MAIL" January 6, 2012

To Interested Parties

Dear Sirs/Mesdames:

Re: Vancouver Island Health Authority (West Coast General Hospital) -and- The Pulp, Paper and Woodworkers of Canada, Local No. 5 (Applicant) -and- International Union of Operating Engineers, Local No. 882 (Incumbent)
(Application for Certification - Case No. 62712/11R)

Enclosed is a copy of the Board's decision, BCLRB No. B9/2012, rendered in connection with the above-noted matter.

Yours truly,

LABOUR RELATIONS BOARD

Jayne Ottens
Senior Executive Assistant to
Allison Matacheskie
Vice-Chair and Registrar

AM/jo

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cc: Katherine Wulf, IRO
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BCLRB No. B9/2012

BRITISH COLUMBIA LABOUR RELATIONS BOARD

VANCOUVER ISLAND HEALTH AUTHORITY
(WEST COAST GENERAL HOSPITAL)

("WCGH" or the "Employer")

-and-

HEALTH EMPLOYERS ASSOCIATION OF BRITISH COLUMBIA

("HEABC")

-and-

THE PULP, PAPER AND WOODWORKERS OF CANADA,
LOCAL NO. 5

("PPWC" or the "Applicant Union")

-and-

INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL NO. 882

("IUOE" or the "Incumbent Union")

PANEL:	Allison Matacheskie, Vice-Chair and Registrar
APPEARANCES:	Paul Lim, for HEABC Peter Shklanka, for PPWC Gurleen Singh Sahota, for IUOE
CASE NO.:	62712
DATE OF HEARING:	October 12, 2011
DATE OF DECISION:	January 6, 2012

DECISION OF THE BOARD

I. NATURE OF THE APPLICATION

1 PPWC applies under Section 18(2) of the *Labour Relations Code* (the "Code") for certification for a unit of employees presently represented by IUOE at West Coast General Hospital ("WCGH") under the consolidated certification for Vancouver Island Health Authority ("VIHA"). The issue in this case is whether four casual employees are employees in the bargaining unit for the purposes of determining threshold support for this application and are eligible to vote in the representation vote. The Employer has taken no position with respect to the issues being adjudicated in this case.

II. FACTS

2 IUOE has been certified since 1995 for a bargaining unit of employees at WCGH. The employees in the bargaining unit are power engineers maintaining the power plant at WCGH by operating, repairing and carrying out preventative maintenance on the boilers, air conditioning, emergency power and other related equipment. There are four regular full-time employees and one part-time employee who have all worked there for more than five and a half years. In addition to the regular full-time and part-time employees, there are seven casual employees who are called in to fill in for the regular employees who require time off work for sickness or vacation. The casual employees are on rare occasions called in to deal with workload emergencies.

3 Employees of WCGH are covered by the Collective Agreement with Health Services and Support – Facilities Subsector Bargaining Association. Article 2.01(c) states:

> Casual employees
>
> A casual employee is one who is not regularly scheduled to work other than during periods that such employee shall relieve a regular full-time or regular part-time employee. Casual employees accumulate seniority on an hourly basis and are entitled to such benefits as are contained in the "Addendum – Casual Employees".

4 Article 5 of the Collective Agreement requires employees, including casual employees, to become members of the applicable union. In order to remain members in good standing, the casual employees pay union dues whether they are actively at work within a month or not. There are numerous provisions in the Collective Agreement governing the terms and conditions of employment of casual employees including wages, benefits, and layoff and recall rights.

5 Seniority at VIHA accrues on an employer-wide basis. As casual employees may hold other positions at VIHA, it is possible that a casual employee has comparable or even more, seniority than a permanent employee.

6 The seven casual employees employed at WCGH are Brent Blake, Barry Dudenhoeffer, Don Grill, Rob Mooney, Rory Panton, Brian Robilliard and Rik Silvius. IUOE has challenged the eligibility of Dudenhoeffer, Mooney, Robilliard and Silvius.

7 Concerning Dudenhoeffer, he was hired on October 10, 2010. There is a factual dispute concerning exactly how many shifts or hours he worked per month in 2011. IUOE asserts he worked approximately four shifts in January and eight shifts in February. For the next six months, he did not work any shifts. He worked one shift in September and two shifts in October. PPWC asserts he worked 35 hours in January, 59.75 in February, 7.5 in September and 13.5 hours in October.

8 Concerning Rob Mooney, he was hired on July 28, 2008. There is a factual dispute concerning exactly how many hours or shifts he worked per month in 2011. IUOE asserts he worked one shift in January and six shifts in February. He did not work any shifts in March. He worked one shift in April. He did not work any shifts in May or June. He worked one shift in July and one shift in August. PPWC asserts he worked 7.5 hours in January, 45 hours in February, 7.5 hours in March, 7.5 hours in July, 7.5 hours in August, and 45 hours in September. PPWC asserts he has 10 more shifts scheduled in October and November.

9 PPWC says the discrepancy in hours may be that some of the shifts were not accounted for by the Employer in its documents disclosed in this case as the shifts were performed in different positions within the bargaining unit such as preventative maintenance and project engineering.

10 Concerning Robilliard, he was hired on April 12, 2011. He worked some shifts in April and May and then accepted a temporary position at another hospital in VIHA. He is scheduled to work at WCGH from December 20-24, 2011. He has accrued seniority hours while working at the other hospital.

11 Concerning Silvius, he was hired on April 21, 2008. He worked one shift in 2010 and one shift in 2011.

III SUBMISSIONS

12 IUOE submits that in order to participate in the certification application, the casual employees must have a sufficient continuing interest in the issue of union representation. It says if they do not have a sufficient continuing interest with the regular employees, then they are not to be included as "employees in the unit": *Surtek Industries Inc.*, BCLRB No. B109/95 (Leave for Reconsideration of BCLRB No. B346/94) at paras. 14-16 *("Surtek")*, *Edoco Healey Technical Products Ltd.*, No. 81/79 *("Edoco Healey")*. It says the Board's policy is set out in *Waldun Forest Products Ltd.*, BCLRB No. B158/93 *("Waldun")* at p. 14:

> Jurisprudence of the former Board, the Industrial Relations Council and the current Board clearly establishes that casual or and part-time workers are employees: *Edoco Healey Technical Products Ltd.*, BCLRB No. 81/79, [1980] 1 Can LRBR 570; *Emergency Health Services Commission*, IRC No. C35/89, (1990) 6 CLRBR (2d) 111, (Reconsideration of IRC No. C237/88); and *Custom Gaskets Ltd.*, BCLRB No. B83/93. However, a determination must be made on the facts of each case to determine whether casual or part-time employees share a sufficient community of interest that they should be included in the bargaining unit and thereby have a say in whether the unit should be certified: *Edoco Healey*.
>
> There is no simple rule which determines the status of a part-time or casual employee. However, over the years the Board and the Council have enunciated a test; namely, do the challenged employees have a "sufficient, continuing interest" in the issue of union representation such that they are entitled to be included in calculating union support, see *Superior Contracting Ltd.*, IRC No. C313/88; *Custom Gaskets Ltd.; and Emergency Health Services Commission*.

13 IUOE submits that casual employees are unlikely to have the same interests in collective bargaining as regular employees. It says unless the community of interest between the casual employees and the permanent employees is significant, the casual employees should not be included in the unit.

14 IUOE submits that in deciding whether or not casual employees have a community of interest, the Board will consider the following four factors: permanence of employment, proportion of casual/temporary employees in the total workforce, nature and organization of the employer's business and each individual's particular employment circumstances: *Edoco Healey, Waldun*.

15 Concerning the permanence of employment, IUOE submits that casual employees have no set shifts or schedule. They are only called in as required to fill in for regular employees. It says they may remain on the casual list at the discretion of the Employer but the casual employees have no right to work unless a regular employee is off.

16 Concerning the proportion of casual employees in the workforce, it says it is possible for the casual employees to overwhelm the wishes of the regular employees with respect to union representation: *P. Sun's Enterprises (Vancouver) Ltd. (Clarion Hotel Grand Pacific)*, BCLRB No. B432/2000.

17 Concerning the nature and organization of the Employer's business, IUOE submits that the Employer has five regular bargaining unit employees and only brings in a casual employee to fill in for a regular employee who is off.

18 Concerning each individual's particular employment circumstances, it says that Dudenhoeffer, Mooney, Robilliard and Silvius work so irregularly and sporadically that they share no community of interest with the regular employees. In particular, it says Silvius has only worked one shift a year in the last two years, Mooney will not work for months at a time, and Robilliard has been filling in for a full-time position for another employer since June 2011.

19 PPWC submits that all of the challenged employees are entitled to be included in this application for the purpose of threshold determination and are eligible to vote as they were employed on the date of the application, are members of IUOE in good standing and continue to be employees in the bargaining unit.

20 PPWC submits that IUOE has not challenged other casuals in the bargaining unit that are similarly situated. It says Blake's hours of work are similar to Mooney's hours but Blake is not challenged by IUOE. It also says that Mooney has twice the seniority of Panton whose status is not challenged. PPWC submits that Mooney has a continuing right to be called in for shifts and a reasonable prospect of not only working more hours and increasing his seniority but of eventually obtaining a permanent position as he gains seniority. PPWC says there is no principle to IUOE's challenges to certain casual employees.

21 PPWC submits that the concerns regarding casuals in a certification application in a non-union environment are distinct from those in a unionized environment. It says persons hired for casual work in a non-union workplace generally do not have an ongoing contract of employment that provides the rights and protections of a collective agreement such as just cause for termination of employment protection, seniority and layoff protections or hiring priority for permanent positions. It says in a non-union environment, casuals are potentially a destabilizing factor in applications for certification because they are so quickly and easily hired and dismissed. It says, in a non-union environment, without some pattern of active employment of some duration and frequency, the Board has limited ability to predict with any certainty if a person performing casual work has a reasonable chance of working again in the future. PPWC also submits that employing casuals has the potential of stacking the voters list or hiring specific persons as a "poison pill" to avoid unionization. It says these concerns are generally not at play in a raid application and have not been raised in this case.

22 PPWC submits the *Edoco Healey* factors are not relevant to the issues in this case. It say *Edoco Healey* addresses the broader question of whether casuals should be included as a class in the bargaining unit and whether a bargaining unit which includes casuals is appropriate for collective bargaining. It says this is not the issue in this case. The sole issue is whether certain casual employees, as distinct from other casual employees, should be included for the purpose of determining threshold support and are eligible to vote in the representation vote.

23 PPWC submits that the appropriate approach is to follow the case law which determines whether a specific individual is an employee in the bargaining unit. It says the test is whether the challenged individual has a sufficient continuing interest to be considered an employee in the bargaining unit: *Surtek*. PPWC submits there is no dispute that the four casual employees challenged by IUOE are employees employed in

the unit. It says the four disputed casual employees have not been terminated or quit with any proximity to the application date and, as such, should be included for the purpose of determining threshold support and be able to cast a ballot at the representation vote.

24 PPWC submits that some adjudicators have conflated the issue of the appropriateness of the bargaining unit and the issue of whether an employee is employed in the bargaining unit for the purpose of threshold and the ballot count. It says the *Edoco Healey* factors should not be considered in the analysis for determining if an individual should be included for the issue of threshold support and has eligibility to vote.

25 PPWC then, in the alternative, addresses each of the *Edoco Healey* factors. Concerning permanence of employment, it says that casuals working under the collective agreement have rights of just cause protection, layoff, recall, call-in and other seniority related rights. It therefore says the factor of permanence of employment is easily met for all casuals in the unionized context.

26 Concerning the proportion of casuals in the workforce, PPWC says once a union is in place, any use or abuse of casuals becomes a matter of collective bargaining. It says the Board has never adopted any principle that casuals in the bargaining unit should never out-number permanent employees for the purpose of a vote.

27 Concerning the nature and organization of the Employer's business, PPWC says this factor is only of significance in determining the appropriateness of the bargaining unit. PPWC disputes IUOE's submission that the Employer has organized its business so that casuals are only called in to fill in for a regular employee who is off. PPWC says this is a term and condition of employment that has been negotiated and is in the Collective Agreement.

28 PPWC, therefore says, the *Edoco Healey* factors are irrelevant to the issues in this case, and alternatively, if they are relevant, they carry little or no weight in the Board's analysis.

29 PPWC says the Board distinguishes the approach to a vote in a non-unionized context to a vote in a unionized context: *Certain Employees of Norter Enterprises Ltd. (Shoppers Drug Mart No. 219)*, BCLRB No. B107/2000 *("Norter Enterprises")*. It says, in *Norter Enterprises*, the question was whether a casual should be included for the purpose of determining threshold and eligibility to vote in a decertification application. The individual in question had only worked four days in total in the capacity of relief and had been hired under the collective agreement. PPWC says the fact that she was hired under a collective agreement alone rendered her eligible to vote according to the sufficient continuing interest test. In *Norter Enterprises*, at paras. 18 and 20, the Board stated:

> The Union cannot say on one hand that Murray is included in the unit and covered by the Collective Agreement, and yet on the other hand say that she lacks a sufficient, continuing interest in the unit.
>
> ...

> Regardless of the number of hours worked by Murray to date, Murray is a recent *bona fide* new hire, working relief hours within the bargaining unit and covered by the Collective Agreement. Given these facts, there is no reason to disenfranchise Murray from her right under the Code to take part in a representation vote under Section 33.

30 PPWC says in *The British Columbia Corps of Commissionaires,* BCLRB No. B384/2002 *("Corps of Commissionaires")*, the Board found two casual employees had a sufficient continuing interest in the bargaining unit and were eligible to vote in a final offer vote. At para. 17, the Board stated:

> Turning to the sufficient continuing interest test, McDowell and McKay have a consistent connection to the worksite; albeit at a small number of hours with the exception of recent circumstances due to the regular employees' sickness and leave of absence. From the context of how casual employees are utilized, they have a permanence of employment. Given the size of the workforce, and the nature of the Employer's business, the use of a casual workforce is not surprising. The individuals' employment circumstances cause them to enter the workforce as a casual employee and work at a number of sites until a regular position becomes available. These three factors support a conclusion that the two employees in question have a sufficient continuing interest in the bargaining unit.

31 PPWC notes that there was no collective agreement in place in the *Corps of Commissionaires* case which it says would have eliminated any consideration of proportionality.

32 PPWC also relies on *Certain Employees of Pacific Undersea Gardens Ltd.*, BCLRB No. B275/2000 *("Pacific Undersea Gardens")*. At para.10, the Board stated:

> The parties included temporary employees as a group in the bargaining unit initially and bargained specific provisions for them in the Collective Agreement. Now that Certain Employees have applied for decertification, the Union cannot use those different terms of employment against temporary employees as a group and argue that they are disenfranchised from taking part in a right conferred to the employees in the bargaining unit under the Code.

33 PPWC also relies on *The Fair Haven United Church Homes,* BCLRB No. BCLRB No. B102/94 *("Fair Haven")*. At p. 2, the Board stated:

> The scope of the unit which is subject of the raid is determined by the collective agreement entered into between the parties. All who are recognized as "employees" under the relevant collective agreement are entitle[d] to cast a ballot.

34 PPWC submits that the Board should follow that approach in these cases and simply determine whether the employees in question are employed in the bargaining unit under the Collective Agreement. It says if the answer is yes, then those employees are entitled to have their wishes considered and their ballots counted. PPWC says the only exception would be where an individual has quit or been terminated some time proximate to the application date.

35 PPWC acknowledges that not all the Board's decisions make the distinction between unionized and non-unionized workplaces. It says in *Certain Employees of Vision Packaging Ltd.*, BCLRB No. B232/2004 *("Vision Packaging")*, the Board looked beyond the fact that the collective agreement "contemplated" casuals and determined that the prospect of future work for the casuals was so tenuous, it resulted in their exclusion for the purpose of the application. PPWC says the decision is not clear on how the use of casuals was contemplated but notes that the use of casuals by that employer was almost without precedent. It says by contrast in this case, the use of casuals is a usual circumstance and casuals maintain an ongoing connection with the workplace through the accrual of seniority and the exercise of call-in rights and priority bidding on more lengthy or permanent positions.

36 PPWC submits that the most compelling factor in favour of inclusion in this case is the fact that all of the casual employees are employees employed in the bargaining unit under the terms of the Collective Agreement. It says the bargaining agent cannot bargain terms and conditions of employment for a group of employees, including the condition that they remain members of the union in order to maintain seniority, and then seek to exclude those employees for the purpose of determining representation.

37 PPWC says the right to be called in is in no way speculative or remote. The casual employees have, as a group, an ongoing and secure relationship with the Employer.

38 PPWC says that the cases relied on by IUOE that address the number of hours required to establish a sufficient continuing interest in the bargaining unit are all in a non-union environment and therefore none of the other relevant indicia of continuing interest arising from a collective agreement come into play. PPWC says, even when applying this standard, all of the challenged casuals with the exception of perhaps one have worked hours far beyond what the Board has considered a minimal amount of hours to establish a connection to the workplace.

39 PPWC submits that all the casuals pay dues, continue to be employed by the Employer, and have a continuing right to be called in for shifts. It says there is therefore a reasonable prospect that they will all continue active employment and exercise their right to work in the future. PPWC submits that the challenges to the four casual employees should be dismissed.

40 PPWC disputes a number of facts on which IUOE relies and submits that further and additional facts are relevant to the Board's determination. It says some of the particulars relied on by IUOE are not correct. It appears that certain types of work are not being accounted for in the hours provided by the Employer.

41 In reply, IUOE submits that many of the facts asserted in the PPWC's submission are inaccurate and unsubstantiated by any supporting documents. It says where there are any discrepancies the documents produced by the Employer should be preferred. It also says that numerous facts relied on by PPWC are irrelevant and should be ignored by the Board.

42 IUOE disputes the claim of PPWC that there is no thread of principle to its challenges. It says it has only challenged those employees that do not have a sufficient continuing interest in the bargaining unit. It says it has not challenged Blake and Panton as they have worked nearly every month. It says Grill works regularly when he is not on vacation. IUOE says it has only challenged those casual employees who work limited, sporadic and irregular shifts.

43 IUOE submits that the Board's jurisprudence establishes that the *Edoco Healey* factors are relevant to the issues in this case. In particular, it submits the law regarding casuals in a non-unionized environment is no different than in a unionized environment. IUOE relies on the Board's analysis in *Bella Vue Guest Home (1988) Ltd.*, BCLRB No. B41/2000 (Leave for Reconsideration of BCLRB No. B253/99) where the Board stated that the general principles of Board policy on the sufficient continuing interest test applied in applications for certification also apply in decertification applications.

44 IUOE submits that it is not enough for a casual employee to be covered by a collective agreement to establish a sufficient continuing interest. It says it would be unfair for a casual employee working very limited shifts at numerous sites to have a say regarding the representation at every site simply because the employee was covered by the collective agreement. It says the Board must consider other factors.

45 IUOE submits that the cases relied upon by PPWC asserting that employees covered by a collective agreement have a sufficient continuing interest are older decisions: *Corps of Commissionaires, Pacific Undersea Gardens, Fair Haven.* IUOE submits that the Board should consider the more recent jurisprudence such as *Vision Packaging, Certain Employees of Playtime Peardonville Ventures Ltd.*, BCLRB No. B155/2008, *Certain Employees of West Boundary Senior Housing Society (Parkview Manor)*, BCLRB No. B125/2011 *("West Boundary")*. IUOE submits that in these cases, the Board looked beyond the mere factor that the challenged employees were covered by a collective agreement. In particular, in *West Boundary*, the Board determined that certain employees could not participate in a decertification application. After considering the *Edoco Healey* and *Waldun* cases, the Board stated, at para. 28:

> ... that neither Weiss nor MacDonald has a sufficient continuing interest to be included in the bargaining unit. While each maintains that they have a continuing relationship with the Employer (the Employer also takes this position), their work history does not support the argument they are likely to work on any regular basis.

46 IUOE submits that when the Board considers all the relevant factors, it is clear that Dudenhoeffer, Mooney, Robilliard and Silvius do not have a sufficient continuing interest in the bargaining unit.

IV. ANALYSIS AND DECISION

47 The question in this case is whether four specific casual employees should be considered when determining threshold support for the application and are entitled to vote in a representation vote. The parties do not dispute that the appropriate test to be applied is the "sufficient, continuing interest test": *Surtek*. The issue raised by PPWC is whether the *Edoco Healey* factors are relevant to a determination of sufficient, continuing interest of casuals in a raid application. The *Edoco Healey* factors are permanence of employment, proportion of casual employees in the total workforce, nature and organization of the employer's business and each individual's particular employment circumstances.

48 I agree with PPWC that in the context of a unionized environment, the first three *Edoco Healey* factors are easily met or of limited weight. The casual employees all have permanence of employment as they have rights under the Collective Agreement including just cause protection for termination of their employment and seniority rights. The proportion of casuals compared to regular employees and the nature and organization of the Employer's business with respect to casuals is not a significant factor in a unionized context as the terms and conditions of casuals are governed by the Collective Agreement binding the Employer and the Incumbent Union. Also, there is not the concern of employer manipulation concerning the use of casual employees which may be present during a certification application.

49 The fourth *Edoco Healey* factor of the individual employment circumstances is relevant. PPWC acknowledges that the Board will consider if the disputed employees are *bona fide* hires who have not resigned or had their employment terminated with any proximity to the application date. There is no dispute in this case that the four individuals are *bona fide* hires who have not resigned or had their employment terminated. However, I do not accept PPWC's argument that the fact that the four disputed casual employees are covered by the Collective Agreement and paying dues to the Incumbent Union, alone, establishes that they are employees in the bargaining unit for the purposes of the representation vote.

50 In the health care industry, it is common for individuals to hold casual positions at numerous sites and work very limited hours at some sites. I accept IUOE's assertion that the Board should not automatically allow casual employees to have a say in representation issues at all sites simply because they are covered by the Collective Agreement. The Board must also consider other factors to ensure that the individual has a sufficient, continuing interest in the bargaining unit that is the subject of the application before the Board.

51 I therefore find that the amount or regularity of the disputed casual employees' work at WCGH is a relevant consideration as it will assist in determining if the employee has more than a legal connection to the bargaining unit. I therefore do not agree with the panel in *Fair Haven* that "all who are recognized as "employees" under the collective agreement are entitle[d] to cast a ballot": *Fair Haven,* at p. 2. In *Norter Enterprises*, the fact the disputed person was covered under the collective agreement was an important factor, but there was also the fact that she was a *bona fide* new hire working relief hours

within the terms of the collective agreement: *Norter Enterprises*, at para. 20. However, where the disputed individuals are "employees in the unit" governed by the collective agreement, I find the amount or regularity of work necessary to persuade me that they have a sufficient, continuing interest is minimal in a raid application. When determining if there is a sufficient, continuing interest, the factors are considered in their totality and rights under the collective agreement are a significant and persuasive factor.

52 Although there is a factual dispute concerning exactly how many shifts or hours Dudenhoeffer and Mooney worked in 2011, there is no dispute that they worked in January, February, September and October of 2011. Mooney also worked limited hours in July and August of 2011. Dudenhoeffer and Mooney are employees in the bargaining unit covered by the Collective Agreement who are called in to fill in for regular full-time employees who require time off for sickness or vacation. From the amount of time they have been called in to work in 2011, it is clear that they are *bona fide* casuals fulfilling this function sanctioned by both the Incumbent Union and the Employer. I find they have a sufficient, continuing interest in the bargaining unit which entitles them to be considered for threshold determination and to cast a ballot in the representation vote.

53 Robilliard is a relatively recent new hire as he was hired on April 12, 2011. There is no assertion that he is not a *bona fide* hire. After working some shifts in April and May, he accepted a temporary position at another hospital in VIHA. There is no dispute that it is a temporary position and he is scheduled to work at WCGH in December 2011.

54 In the context of a certification application, I may very well have found that Robilliard had too tenuous a connection with the worksite that is the subject of the application as he worked very few hours before taking a different job and only has hours scheduled after the application before the Board was filed. However, in this case, there is no assertion of any Employer manipulation and Robilliard has done what many casuals do in the unionized health industry context. He has taken a temporary regular position within VIHA where he continues to accrue seniority and at the end of the temporary position is again scheduled for casual shifts at WCGH. In these circumstances, I find Robilliard has a sufficient, continuing interest in the bargaining unit at WCGH.

55 Concerning Silvius, he was hired on April 21, 2008. He worked only one shift in 2010 and one shift in 2011. Again, in a non-union context, I may very well have found that Silvius had too tenuous a connection with the worksite as he worked very limited hours in the past two years. However, he is a dues paying member of the Incumbent Union covered by the Collective Agreement and has been called in for relief work at least once a year in the past two years. There is no assertion that he is not a *bona fide* hire or that his recent shifts were a result of Employer manipulation. I therefore find that he is an employee with a sufficient, continuing interest in the bargaining unit.

56 I also do not accept IUOE's argument that the casual employees are unlikely to have the same interests in collective bargaining as the regular employees and therefore do not have a sufficient, continuing interest in the bargaining unit. The casual employees, as a group, are in the bargaining unit and as noted in *Pacific Undersea Gardens*, at para. 10:

> The parties included temporary employees as a group in the bargaining unit initially and bargained specific provisions for them in the Collective Agreement. Now that Certain Employees have applied for decertification, the Union cannot use those different terms of employment against temporary employees as a group and argue that they are disenfranchised from taking part in a right conferred to the employees in the bargaining unit under the Code.

57 Considering the individual employment circumstances of the disputed individual casual employees and the permanence of their employment as established in the Collective Agreement, I find that all four disputed casual employees have a sufficient, continuing interest in the bargaining unit. I dismiss the objections. I find the application has the requested threshold support and order the ballots to be counted.

LABOUR RELATIONS BOARD

ALLISON MATACHESKIE
VICE-CHAIR AND REGISTRAR