

# **ANTHONY F. DALE**

**Barrister & Solicitor**

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April 3, 2003

**Mr. Tim Parker**  
**Registrar,**  
**Ontario Labour Relations Board**  
**505 University Avenue, 2<sup>nd</sup> Floor**  
**Toronto, ON M5G 2P1**

**Dear Sir:**

**Re: Dave McPherson v. International Brotherhood of Teamsters;**  
**Board File No. 3849-02-U;**  
**International Brotherhood of Teamsters v. Teamsters Local Union 938;**  
**Board File No. 1494-02-T**

**I am counsel for Dave McPherson.**

**We acknowledge receipt of the Board's decision in these matters dated March 13, 2003. The Board in that decision treated Mr. McPherson's application in Board File No. 3849-02-U as an intervention in the application by International Brotherhood of Teamsters ("the IBT") in Board File No. 1494-02-T. That application is a request for an extension of the present trusteeship of Teamsters Local Union 938 beyond the normal twelve-month period prescribed in s.89(2) of the *Labour Relations Act, 1995*. The Board directed that Mr. McPherson file a further submission in response to IBT's application. The Board also indicated in**

its decision that a hearing of the IBT's request will be necessary. The following is Mr. McPherson's submission as directed by the Board. This submission deals with the facts. It does not contain full submissions with respect to the applicable law. Those submissions will be made at the hearing.

**PART I**      **MR. McPHERSON'S SUBMISSIONS**  
**IN RESPONSE TO THE GROUNDS RELIED ON BY THE I.B.T.**

1. The following are Mr. McPherson's submissions in response to the IBT's extension request. The headings are the same headings set out in the IBT's request.

**"The Trusteeship Process"**

2. Mr. McPherson does not dispute the background facts set out in the IBT's application dated March 7, 2003 under the heading "The Trusteeship Process" beginning on page 2 of that application, except that:
  - ! Mr. McPherson has no knowledge of the Executive Board resolution, a portion of which is reproduced at the bottom of page 3 of the application;
  - ! The characterization of the objective of the trusteeship, as set out in the second last paragraph on page 5 of the application, is inaccurate and self-serving;
  - ! Any conclusions or statements contained in the Trustee's six-month report to the International General President, referred to at page 6 to page 8 of the application, are similarly self-serving.

**"Consent of the Board"**

3. Mr. McPherson disputes all of the allegations of fact and the submissions of the IBT under the heading “Consent of the Board” beginning at page 8 of the IBT’s request. The IBT relied on four separate grounds in support of its extension request.
4. Mr. McPherson makes the following submissions with respect to each of the four grounds relied on by the IBT:

*(i) “Ongoing/Future Collective Bargaining Involving Major Bargaining Units”*

5. The existence of ongoing or future collective bargaining obligations does not constitute good reason for the exercise of the Board’s discretion in favour of extending the present trusteeship beyond the normal twelve month period prescribed by s. 89(2) of the *Labour Relations Act, 1995*.
6. As stated in the IBT’s application, Local 938 represents over 10,000 employees in more than 100 bargaining units. It is very rarely the case that at any particular moment, collective bargaining with various employers is not imminent. If it is the position of the IBT that pending negotiations require an extension of the present trusteeship, the trusteeship might never be lifted.
7. It is not sufficient for the IBT to say that the trusteeship must be extended in order to ensure that experienced and knowledgeable persons are involved in ongoing or future collective bargaining. Firstly, it will always be the case in a democratic trade union structure that local union officers with no experience in bargaining might be elected. Such officers will in the usual case have the assistance of their national and international union structures in order to carry out the responsibilities of their office. The IBT provides orientation and training to newly elected officers. In the present circumstances, if the requested extension is not granted, and if an election

is held and new and inexperienced officers are elected, the IBT will be able to provide orientation and training to such officers to ensure that Local 938's bargaining responsibilities are satisfied.

8. Secondly, Local 938 continues to employ business agents who have sufficient experience to carry out ongoing or future collective bargaining under the supervision of elected officers. Local 938 also has members in each bargaining unit who can participate actively in negotiations.
9. Thirdly, many of Local 938's bargaining relationships are ones in which Local 938 officers, representatives and members participate in joint bargaining with other Teamsters local unions in regional, provincial or national collective bargaining. Allied Systems and Purolator Courier are employers which bargain with other local unions in such a bargaining structure. The need for the presence in Local 938 of so-called experienced and knowledgeable officers is reduced where bargaining responsibilities are shared with other local unions or where such responsibilities are vested in a regional or national trade union organization.
10. Mr. McPherson makes the following submissions with respect to the specific bargaining situations relied on by the IBT under this heading:

***Allied Systems***

11. Collective bargaining with Allied Systems is carried on simultaneously by Local 938 together with Local 880 representing members in Ontario, and Locals 69 and 106 representing Allied employees in Quebec. Local 938 represents a majority of car haul employees in the two provinces and has traditionally led the negotiations.

12. The recent collective bargaining with Allied Systems was initially chaired by Assistant Trustee Ed Hawrysh. Hawrysh had no prior experience in car haul negotiations. His appointment by the IBT to chair the negotiations was despite the continued availability of capable Local 938 personnel. Local 938 continues to employ business agents who could have led those negotiations from the outset. Ray Hill is a business agent who has been employed by Local 938 for at least the last ten years. He has participated in several rounds of car haul negotiations (including negotiations with Allied and its predecessors). He co-chaired those negotiations in 1999. At the conclusion of the most-recent negotiations (i.e. the negotiations referred to at page 8 of the IBT's request), Hill was the spokesperson at bargaining with Allied, even though the negotiations were by then chaired by Larry McDonald.
  
13. In any event, negotiations with Allied Systems have now concluded. A collective agreement has been concluded and was ratified during the past weekend.

***Purolator Courier***

14. Local 938 is not the bargaining agent for employees of Purolator Courier. The bargaining agent is the Canada Council of Teamsters. That Council is the certified bargaining agent for a national bargaining unit of Purolator's employees pursuant to the *Canada Labour Code*. A national collective agreement is negotiated by that Council and is administered on a day-to-day basis by fourteen regional local unions across Canada. Five of those local unions are in Ontario. One of those five local unions is Local 938.
  
15. Collective bargaining with Purolator is conducted on a national level by the Council. The Council is comprised of local unions including the fourteen local unions mentioned in the previous paragraph. A national negotiating

committee is chaired by the Director of the Small Package Division of Teamsters Canada. Val Neal is the present Director. He was the Director and chaired the national negotiations in 1996 and 1999. He will chair the national negotiations in 2003.

16. In the 1999 negotiations, Local 938 contributed five members to the national negotiating committee. One of those members was Bob Miles. He was then a business agent employed by Local 938. Mr. Miles continues to be employed as a business agent by Local 938. He continues to have responsibility for representing Local 938 members at Purolator. More recently, the Trustee has hired Fred Randall as a Local 938 business agent. Mr. Randall was formerly a business agent with Local 879 in Hamilton where he had responsibility for representing Local 879 members employed by Purolator. Randall was the senior member of the Local 879 contingent at negotiations with Purolator in 1999.

#### *Pepsi-Cola*

17. The assigned business agent for Local 938 members at Pepsi-Cola in Mississauga is Craig McInnes. He has five years experience as a business agent with Local 938. Prior to that employment, he had other experience bargaining in the beverage industry. At page 11 of his six-month report to the IBT (at Tab 4 of the IBT's request), Trustee McDonald offers the opinion that five years service is generally required to produce an experienced business agent.

#### *JAZZ Airline*

18. Like Purolator, employees of JAZZ Airline are represented in collective bargaining by Canada Council of Teamsters and not by Local 938. The Canada Council of Teamsters is the certified bargaining agent of JAZZ

employees pursuant to the *Canada Labour Code*. Local 938 administers the Canada Council of Teamsters' national collective agreement only in respect of the JAZZ employees who are based in Toronto. That group comprises a minority of the total number of JAZZ employees represented by the Canada Council.

19. The IBT does not suggest in its application that collective bargaining between the Canada Council and JAZZ Airline is imminent.
20. If threatened layoffs and concession demands by Air Canada require bargaining, the primary responsibility for such bargaining will lie with the Canada Council and Teamsters Canada. Teamsters Canada employs a full-time Director of its Airline Division. He is Michael Crawford. The Director has been the spokesperson for the Canada Council in past bargaining with Air Canada.
21. In addition, some JAZZ employees in Toronto have experience as officers of a local of the Canadian Union of Public Employees (CUPE) which previously was their bargaining agent. They are capable of contributing to bargaining with their employer.

***(ii) "Recent Acts of Intimidation and Coercion in Connection with Allied Systems Negotiations and the Final Offer Vote"***

22. The events described in the IBT's application under this heading are not relevant to the request for the extension of the present trusteeship and do not constitute good reason for the exercise of the Board's discretion in favour of extending the present trusteeship beyond the normal twelve month period prescribed by s. 89(2) of the *Labour Relations Act, 1995*.

- 23. Even if the IBT's version of the Windsor events is true in its entirety, which is denied, they are isolated events which are unrelated to the general governance of Local 938. For example, there is no suggestion in the IBT's application that such conduct has occurred elsewhere, or that such conduct has occurred at any general membership meeting. These events are not, as the IBT states at page 12 of its application, evidence that "a culture of legality and democracy is not firmly rooted". The Board cannot permit lively, vociferous, even raucous conduct at a meeting of local union members at one of over 100 bargaining units to justify an extension of the trusteeship.**
- 24. The decision of the Trustee and Assistant Trustee to seek ratification of an employer offer by mail-in ballot, as described in the IBT's application, was entirely contrary to the long-established practice in the car haul industry in Ontario and Quebec of having ratification balloting done at membership meetings and workplace votes. That and other decisions caused the Trustee and Assistant Trustee to lose the confidence of the bargaining committee.**
- 25. No criminal charges were laid against any member as a result of any complaint by Hawrysh or any other IBT or Local 938 representative.**
- 26. Hawrysh has laid charges against some members pursuant to the Constitution of the IBT and the Bylaws of Local 938. Those charges are within the jurisdiction of Teamsters Joint Council No. 52. The charged members have requested that the charges be heard expeditiously. The Joint Council will decide whether and/or how to deal with the charges at its scheduled meeting at the end of March 2003.**



***(iii) “Mentoring and Education of Business Agents”***

- 27. Mr. McPherson does not dispute the facts recited in this section of the IBT’s application but does not agree with the opinions of McDonald which are recited there, and has no knowledge of the circumstances surrounding the dismissal by McDonald of Wayne Maslen.**
- 28. The desirability of providing ongoing training and guidance to business agents does not constitute good reason for the exercise of the Board’s discretion in favour of extending the present trusteeship beyond the normal twelve month period prescribed by s. 89(2) of the *Labour Relations Act, 1995*. As well, the International has had sufficient time during the trusteeship to carry out such training and guidance.**
- 29. It has always been the case that Local 938 has employed some business agents with lengthy experience and others with less experience. Some have in the past been employed for lengthy periods and others for relatively brief periods. The Bylaws of Local 938 provide that the Executive Board of the local union may appoint and remove business agents at will. Regardless when the trusteeship is brought to an end, new business agents may be appointed by the incoming Executive Board. It will always be the case in a democratic trade union structure that elected local union officers may wish to appoint new representatives in whom they have confidence. New representatives will in the usual case have the assistance of their local, national and international union structures in order to carry out the responsibilities of their office. In the present circumstances, the IBT provides orientation and training to newly elected officers and to business representatives. If the requested extension is not granted, and if an election is held and new business agents are appointed by the elected officers, the IBT will be able to provide orientation and training to such representatives. The IBT has recently done so following elections at Teamsters Local 31 in**

British Columbia. In that local union, an incumbent administration, comprised of a seven-member Executive Board and six elected business agents, were defeated in an election. Only two of the incoming officers and business agents had any experience in union administration or collective bargaining. Training for those persons is properly being provided by the IBT and Teamsters Canada.

*(iv) "The Ongoing Audit Process in Respect of the Health and Welfare Trusts and Various Pension Plans"*

30. At page 12 of the IBT's request, it is said that a significant purpose of the trusteeship was to restore financial accountability and stability. Exhibit #7 appended to the IBT's application is a letter to Benefit Plan Administrators Ltd. ("BPA") from the Trustee in which the Trustee seeks information about some but not all of the health and welfare and pension plans in which some Local 938 members are enrolled. BPA is the administrator of each of the named plans.
31. The issues of financial accountability which justified initial imposition of the trusteeship were not issues concerning the governance of any of any of the plans identified in McDonald's letter. The matters raised by the Trustee in his letter are not matters on which the IBT relied when the trusteeship was imposed. They were not in McDonald's pre-trusteeship report to the General President (see Tab 1 of the IBT's request). They were not among the subjects that were brought to the hearing panel by McDonald in June 2002 (see Tab 2 of the IBT's request). At best, McDonald's inquiry ought to be viewed by the Board as a transparent effort by the Trustee to build a case in support of its request that the trusteeship be extended.
32. One of the plans or funds referred to in McDonald's letter is the Eastern Canada Car Carriers Health and Welfare Trust Fund. That fund is a jointly

trusteed fund which is the vehicle by which certain benefits are delivered to employees of car haul employers represented by four Teamsters locals, one of which is Local 938. Local 938 appoints some of the union trustees. The Local may appoint and remove such trustees at will. The IBT Trustee has not removed any trustee and has not attempted himself to be added as a trustee. The fund's trustees have an ongoing ability (and indeed an ongoing responsibility) to safeguard the interests of the beneficiaries of the fund. Local 938 does not otherwise control the activities of the fund, save for the negotiation with employers of premium and benefit payments. Therefore, the IBT and its Trustee cannot rely on any perceived deficiencies in the administration of that fund in support of an extension of its trusteeship of Local 938.

33. The same submission may be made with respect to each of the other funds and plans described in the McDonald letter to BPA. Each of them (with the possible exception of the Ontario Short Haul Carriers Pension Plan of which Mr. McPherson has no knowledge) provides benefits to members of Local 938 and to members of other Teamsters local unions. Each is governed or controlled by a board of trustees. Local 938 does not control the operation of those funds except to the extent that it may appoint some of the trustees of those funds.
34. To the extent that McDonald's inquiries to BPA are legitimate, the IBT's application does not suggest that the inquiries could not be continued by elected officers after the trusteeship is brought to an end.
35. Further, the IBT has had sufficient time since last May to inquire into any perceived deficiencies in the administration of such plans and funds.

36. Mr. McPherson objects to the requested extension for the following additional reasons:

*The members of Local 938 will suffer prejudice if an extension is granted*

37. The IBT has requested an extension of their trusteeship that would cause the trusteeship to continue for a total of nineteen and-a-half months.
38. The date to which the IBT has requested that its trusteeship be continued would be twelve months after the date on which the term of office of the previous Local 938 Executive Board would have ended. That term of office was to expire on December 31, 2002. But for the trusteeship, elections would have been held in October 2002 and a new Executive Board would have taken office on January 1, 2003. If the requested extension is granted, the members of Local 938 will be deprived for a full year of the ability to participate in the democratic administration of their trade union through an election of officers.
39. The date to which the IBT has requested that its trusteeship be continued would be six years after the last local union election in Local 938.
40. At the trusteeship hearing in June 2002 (the report of which is at Tab 2 of the IBT's request), the panel recognized that a vast majority of the Local 938 members who appeared at that hearing, or who signed petitions that were submitted to the hearing panel, favoured an election of Executive Board officers at the end of 2002 as scheduled. The panel's report refers to its receipt of petitions containing 1143 signatures which called for the holding of the Local 938 executive board elections as scheduled at the end of 2002.

***The IBT had ample time to “fix” Local 938 and, until May 2002, did nothing.***

- 41. From at least 1999, Mr. McPherson and other Local 938 members began to call for the assistance of the IBT to deal with concerns about the administration of Local 938 by ex-president Ray Bartolotti, including concerns about questionable financial transactions and dealings. These demands for assistance included charges pursuant to the IBT Constitution by the Secretary-Treasurer of Local 938 against Bartolotti. Those charges included charges about the improper administration of Local 938 generally and about the improper disbursement of local union funds in particular.**
- 42. In the fall of 1999, IBT General President Hoffa appointed Tom Baldwin, the president of Windsor-based Local 880, to inquire into member complaints about Bartolotti’s administration of Local 938. Baldwin was at that time a trusted advisor to Hoffa. Mr. McPherson and other Local 938 members understand that Baldwin advised Hoffa in early 2000 by way of a written report that his investigation disclosed sufficient grounds for the imposition of a trusteeship.**
- 43. Until the trusteeship was imposed on May 16, 2002, the IBT did nothing in response to member complaints, or in response to the Secretary-Treasurer’s charges, or in response to Baldwin’s report despite being in possession of substantially all of the necessary information.**
- 44. Appended to the IBT’s application is a report submitted by McDonald to General President Hoffa on May 6, 2002. That is the report which the IBT says caused the trusteeship to be imposed. All of the major items cited in that report were matters that had occurred and that had been brought to the IBT’s attention up to three years earlier by Mr. McPherson and other members. For example:**

- 3. The report at page 3 refers to charges by and against Bartolotti in 2000 and 2001, including findings of election-related misconduct by Bartolotti in the 2001 IBT Elections;**
- 4. The report at page 3 and 4 refers to the improper relocation of general membership meetings to remote locations in Northern Ontario by Bartolotti beginning in September 2000, a matter which was the subject of complaints by members to the IBT beginning at that same time;**
- 5. The report at page 4 refers to the improper cancellation of general membership meetings during the summer of 2000;**
- 6. The report at page 5 refers to the improper adjournment of general membership meetings beginning in September 1999;**
- 7. The report at page 10 refers to unilateral decision-making by Bartolotti with respect to large financial transactions beginning in 1999 a matter that was the subject of the above-mentioned charges by the Secretary-Treasurer in December 1999;**
- 8. The report at page 9 under the heading “Financial Malpractice” refers to frequent appointments and terminations of staff, and refers specifically to events which occurred in 1998 and 1999 and which were brought to the attention of the IBT at that time;**
- 9. The report at page 9 and 10 under the heading “Financial Malpractice” refers to the improper disbursement of large sums of money, beginning in August 1999, a matter which was the subject of the above-mentioned charges by the Secretary-Treasurer in December 1999.**

10. Some of these same matters were also the subject of a lawsuit by a former business agent, filed in or about 1999 or 2000, the particulars of which are known to the IBT and its Trustee.
45. In the circumstances, where the IBT did not act for more than three years in response to the matters on which it eventually relied in May 2002, the Board ought not to entertain the IBT's request for an extension where the effect of that extension would be to further postpone the opportunity of Local 938 members to participate in the democratic administration of their union by way of local union elections.

*The request for an extension is politically-motivated.*

46. Mr. McPherson was among those Local 938 members who welcomed the imposition of a trusteeship in May 2002 as a remedy for the improper administration of Local 938 by the previous Executive Board. However, Mr. McPherson and other Local 938 members were deeply suspicious about the timing of the trusteeship on the eve of scheduled local union elections. As recited in Mr. McPherson's application in Board File No. 3849-02-U and above, the last elections in Local 938 were conducted in late 1997. An Executive Board took office in January 1998 for a five-year term, expiring at the end of 2002. Absent the trusteeship, elections would have been held again at the end of 2002, with a new Executive Board then taking office at the start of 2003.
47. By the spring of 2002, Bartolotti was a political liability to the IBT. Local 938 elections were approaching and it was clear that no slate of candidates that included or was backed by Bartolotti could be elected in the forthcoming elections. As well, Bartolotti's enthusiastic political support for General President Hoffa had polarized the political climate in Local 938 to the point

where it was likely that the elections would be won by candidates who, in other elections, had been aligned against Hoffa. The circumstances that produced that condition included the following:

3. During 2001, members of Local 938 participated in hotly-contested International elections. Those elections were in February and March 2001 (for the election of a slate of delegates to a Convention of the IBT in Las Vegas in summer 2001) and in fall 2001 (for election of the IBT General President, IBT International Vice-President and other IBT Officers). The two elections are generally referred to together as the “2001 IBT Election”. The 2001 IBT Election was preceded during 2000 and 2001 by lengthy campaigning and vigorous political activity within Local 938. The 2001 IBT Election was closely supervised by the Office of the Election Administrator for the International Brotherhood of Teamsters, an official appointed pursuant to an agreement between the IBT and the U.S. Government.
4. Mr. McPherson participated actively in the 2001 IBT Election. In the spring 2001 delegate election, McPherson was one of a slate of candidates who stood for election. The opposing slate of candidates was led by Bartolotti and backed by the then-incumbent IBT General President Hoffa. McPherson’s slate of candidates won all of the thirteen delegate positions and all of the two alternate delegate positions in the delegate elections by roughly a two-to-one margin.
5. In the fall 2001 IBT officers election, Mr. McPherson supported a slate of candidates including John Hull (a Local 938 member and candidate for International Vice-President) and Tom Leedham (a candidate for IBT General President). That slate of candidates was opposed by Bartolotti and by the then-incumbent general President Hoffa. Although the Hoffa slate was successful in that election, a



majority of Local 938 members voted for his opponents, largely because of Bartolotti's endorsement of and campaigning for the Hoffa slate.

6. In the course of the 2001 IBT Election, the Office of the Election Administrator on several occasions upheld complaints by Local 938 members that Bartolotti had acted improperly by, for example, retaliating against Local 938 members who were participating in the elections and by misusing Local 938 resources in his own campaign. Those findings of misconduct by Bartolotti were embarrassing to Hoffa (who was the intended beneficiary of some of Bartolotti's efforts) and proved detrimental to Hoffa's own reelection campaign within Local 938, as evidenced by the results of both the delegate and officer elections.
48. The May 6, 2002 McDonald report to Hoffa (in obvious contrast to the present IBT application) did not conceal the political nature of the trusteeship:
3. The report at page 2 under the heading "Overview", in the last paragraph, includes a statement that: "...[T]he local's officers election is scheduled for this fall. The current political atmosphere has been so poisoned by the ongoing turmoil that an election is unlikely to reflect the true wishes or best interests of the membership. Consequently, it is imperative that stability, order and membership confidence be restored as a precondition to successful negotiations and a fair and responsible election."
  4. The report at page 11 under the heading "Recommendation" refers to the "poisoned" political climate in the local.

5. **These opinions about the political climate in Local 938 were reiterated in IBT General President Hoffa's initial decision which is not appended to the IBT's application but which is reproduced at page 9 of Mr. McPherson's application. Hoffa said that the "... political climate has been poisoned such that an election is unlikely to reflect the actual preferences or best interests of the membership"**
  
49. **Mr. McPherson disputes that the political climate produced by the Bartolotti administration in any way gave rise to a situation in which the actual preferences or best interests of the members of Local 938 could not be determined. The 2001 IBT Election reflected the actual preferences of Local 938 voters.**
  
50. **Mr. McPherson submits that the primary purpose of the trusteeship, timed as it was on the eve of local union elections, was to frustrate the likely election of a local leadership which included persons who in the 2001 IBT Election had been allied in opposition to the Bartolotti administration and the present administration of the IBT.**
  
51. **Mr. McPherson submits that an extension of the trusteeship would serve only to assist the IBT's efforts to frustrate the likely election of such an administration by permitting the Trustee to groom possible candidates for the eventual elections. The Trustee has taken out membership in Local 938 and is therefore a possible beneficiary of those efforts. Such a purpose does not constitute good reason for the Board to grant the requested extension.**
  
52. **For all of the above reasons, Mr. McPherson submits that the IBT's extension request should be dismissed, and requests that the orders requested by him in his application in Board File No. 3849-02-U be granted.**

**ALL OF WHICH IS RESPECTFULLY SUBMITTED**

**ANTHONY F. DALE**  
Barrister & Solicitor

**cc:Mr. Dave McPherson**

**Mr. David Bloom, Cavaluzzo Hayes**

**Mr. Jim Bowman, OLRB**