

File No. 02-049

Decision No.

**IN THE MATTER OF  
A MOTION TO WITHDRAW AN APPLICATION FOR CERTIFICATION AND  
A REQUEST FOR A TIME BAR**

**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.  
David W. Hooley, QC., P. Alanna Taylor  
and Karen A. Campbell**

**DECISION**

**Background**

An application for certification was filed on April 23, 2002, pursuant to Subsections 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 Board certify the Applicant as bargaining agent of the employees in the unit set forth as appropriate for collective bargaining. The Applicant, in paragraph 6 of its application, describes the unit as: “*All commissionaires employed by the Canadian Corps of Commissionaires New Brunswick & PEI Division Inc. in the province of Prince Edward Island.*”

On September 24, 2002, Counsel for the Applicant, delivered and faxed correspondence to the Board to the effect that the Chief Executive Officer of the Board had advised him that it was a requirement that there be an application seeking the Board’s consent for withdrawal “... *notwithstanding that the Labour Act and Regulations thereunder does not provide for such process...*” He then thereby applied “... to the Board for the withdrawal of the aforesaid Application for Certification.

What purports to be an Intervention by the Respondent, was filed September 24, 2002, pursuant to Section 9 of *Labour Act Regulations* as amended, citing grounds for the “Interpretation” as per paragraph 2 thereof, and requesting “*the Board and its staff use extra care in scrutinizing the membership evidence to ensure that there has been compliance with the PEI Labour Act and Regulations.*” There was also a letter from Karen A. Campbell, counsel for the Respondent, dated September 25, 2002 stating that the Corps of Commissionaires wishes to respond to the Application made in Mr. MacKay’s letter of September and making reference to “...the Board’s jurisdiction to impose a time bar, which the Corps is hereby requesting. ...”

Neither of these documents are made by Statutory Declaration.

There was a Pre-hearing Conference held by conference call November 13, 2002.

There was a hearing convened on the 15<sup>th</sup> day of November, 2002, and counsel jointly presented an undertaking to the effect that:

*UNDERTAKING FILED WITH THE PEI LABOUR RELATIONS BOARD AND THE CANADIAN CORPS OF COMMISSJONAIRES N.B. & P.E.I. DIVISION INC. (HEREAFTER THE "CORPS") BY THE PUBLIC SERVICE ALLIANCE OF CANADA (HEREINAFTER THE "PSAC")*

*The PSAC irrevocably undertakes to the PET Labour Relations Board and the Corps that as a condition of the Corps agreeing not to oppose the PSAC's application for withdrawal of its Application for Certification filed on April 24<sup>th</sup>, 2002 (Board File # 02-049) the PSAC will not on its own behalf nor will any PSAC local, file another application for certification on Prince Edward Island involving the Corps or its members, for a period of at least three months from the date this undertaking is executed and delivered to the PEI Labour Relations Board and legal counsel for the Corps, Karen Campbell. In the event that a subsequent application for certification is filed within the three month period, the PSAC hereby irrevocably agrees that such application should be dismissed by the PEI Labour Relations Board, and that such dismissal shall not be opposed by the PSAC or any local of the PSAC.*

*Signed, sealed and delivered this      day of November, 2002 by      , a duly authorized signing authority of the P SAC.*

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*This Undertaking is hereby filed with the Board by Counsel for the PSAC, Gordon MacKay, Q.C., and it is understood that in the event the undertaking is not executed by a duly authorized representative of the PSAC and provided to the PEI Labour Relations Board, the hearing adjourned seeking a time bar to be imposed on the PSAC as a result of its application to withdraw its Certification Application, will be rescheduled by the Board.*

*Agreed to as to form and substance this 15<sup>th</sup> day of November, 2002:*

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*Gordon MacKay for the PSAC*

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*Karen Campbell, for the Corps*

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*, for the PEI Labour Relations Board*

Upon the execution of this document by counsel and the panel members, the matter was adjourned until a member of the executive of the Applicant union could execute it and Mr. MacKay could have the document filed with the Board. The duly executed document was filed with the Board on November 22, 2002.

**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)** Sections 2 and 23.

**Evidence**

At the hearing on November 15, 2002, neither party called any evidence.

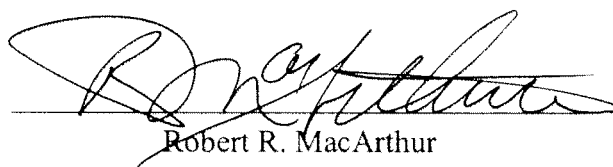
**Issues**

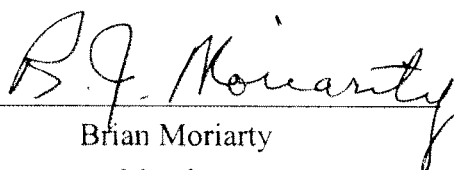
The issues before the Board relate to whether the Board is to grant the Applicant's motion for withdrawal of its application and the disposition of the Respondent's request for a time bar.

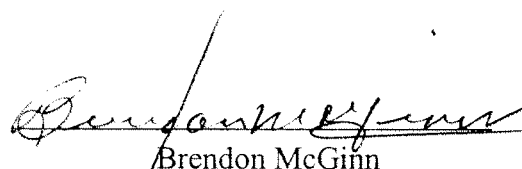
**Decision**

This Board commends both parties and their respective counsel for the manner in which they have jointly proposed the resolution of the issues before the Board in this regard. It has given careful consideration to the reciprocal Undertakings of counsel and the parties. The Board entirely concurs with the resolution as proposed by the parties.

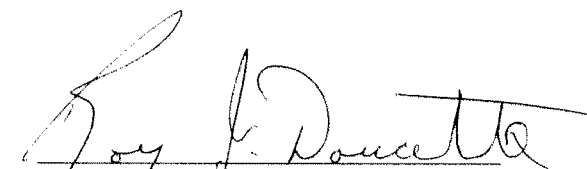
Therefore the Board grants its consent to the withdrawal of the Application for Certification filed on April 23, 2002. In all the circumstances of this case, an exercise of the Board's discretionary power to impose a time bar is precluded. The request made on the part of the Respondent to impose a time bar is rendered moot. The Board so rules.

  
Robert R. MacArthur  
Chair

  
Brian Moriarty  
Member

  
Brendon McGinn  
Member

This Decision made by the Prince Edward Island Labour Relations Board on the 15th day of November, A.D., 2002, and issued under the hand of its Chief Executive Officer on the 11<sup>th</sup> day of December, A.D., 2002.

  
Roy J. Doucette  
Chief Executive Officer