



File No. 04-002

Decision No.

**IN THE MATTER OF A MOTION FOR AN ENLARGEMENT OF TIME FOR FILING,**

**BETWEEN:**

**THE PRINCE EDWARD ISLAND UNION OF PUBLIC SECTOR  
EMPLOYEES (U.P.S.E.)**

**APPLICANT**

**AND:**

**THE ATLANTIC TOURISM AND HOSPITALITY INSTITUTE INC.  
(A.T.H.I. Inc.)**

**RESPONDENT**

**COUNSEL FOR THE APPLICANT  
COUNSEL FOR THE RESPONDENT**

**Mr. John W. Hennessey, QC.  
Mr. Eugene P. Rossiter, Q.C.**

### **DECISION**

#### **Background**

An application for certification was filed with this Board on the 26th day of January, 2004, pursuant to Sections 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 being appropriate for collective bargaining. The Applicant, in paragraph 6 of its application, describes the unit as all employees who are permanent, part-time, casual or otherwise in any of the administrative and/or support positions.:

The Board issued a letter to the Respondent on the 26<sup>th</sup> day of January, 2004, enclosing a copy of the application as well as copies of Form 3, Form 4, Notice to Employees required for posting in "conspicuous places where they are readily available to all employees". Also enclosed was a copy of Form 5 required to be completed and returned to the Board on or before the "**Terminal Date of 13 February 2004.**"

This document also instructed the Respondent that any objections to the request for certification should be committed to writing and submitted to the Board on or before the thirteenth day of February, 2004, and it asked that the Respondent ensure that the written objections, if any, comply with the *Prince Edward Island Labour Act and Regulations*, copies of which were also enclosed.

In a letter dated the 12<sup>th</sup> day of February, 2004, the Respondent requested an extension of the terminal date from February 13<sup>th</sup> to February 20<sup>th</sup>, 2004, citing a list of some 18 alleged facts in support of the request. It was contended that through an “unintentional administrative error” that the Application was filed away and not posted as directed in the letter from the Board. It was also stated that counsel for the Applicant that there would be no consent to the Respondent’s request for extension of the terminal date.

Counsel for the Applicant responded in a letter dated February 12, 2004 confirming that the Applicant was not consenting to extension of the terminal date and cited a number of reasons as to why that decision was made.

On February 13, 2004, there was a letter received from counsel for the Respondent in rebuttal to the Applicant’s response to the initial letter of request.

A panel of the Board considered all of the relevant materials and issued an oral decision through the Chief Executive Officer, advising that written reasons would follow, to extend the terminal date to the close of business on the 17<sup>th</sup> day of February, 2004.

### **Cases Considered**

1. ***Glen MacKinnon, Sylvan Gallant, Zoel Arsenault, Reuben Feehan, et. al, Employees of B-Line Construction v. International Brotherhood of Electrical Workers, Local 1432, and B-Line Construction (Trade Name) a Division of N. A. S. Holdings Ltd.*** (unreported, 25 March 1997, Prince Edward Island Labour Relations Board);
2. ***Construction and General Labourers’ and General Workers’ in Construction and Commercial, Local Union no. 1077 v. Steeplejacks Services, a Division of a numbered Ontario Company, and United Brotherhood of Carpenters & Joiners of America, Local 1338, Intervenor,*** (unreported, 17th November 2003, Prince Edward Island Labour Relations Board);

### **Statutes Considered**

1. ***Labour Act, R.S.P.E.I. 1988 Cap. L-1,*** sections 13, 48, 53, and 54.
3. ***Labour Act, Regulations (EC 521/71)*** Sections 2, 4, 8, and 25.

### **Evidence**

The Board did direct that the convening of a hearing was not required in the circumstances of this matter. The filed application and the resulting correspondence between the Board and the two parties form the body of evidence considered in this motion.

### **Issues**

The sole issue before the Board is whether to grant the Respondent's Motion for enlargement of time to extend the terminal date from February 13 to February 20, 2004.

### **Decision**

The matter of the enlargement of time and the exercise of the Board's discretionary power to do so has recently been addressed by the Board. In its decision in *Construction and General Labourers' and General Workers' in Construction and Commercial, Local Union no. 1077 v. Steeplejacks Services, a Division of a numbered Ontario Company, and United Brotherhood of Carpenters & Joiners of America, Local 1338, Intervenor*, the Board stated:

*The Board is mindful of the fact that discretionary powers are a particularly important privilege granted to the Board in the empowering legislation, and are not powers that are to be exercised lightly. The facts of each individual case are to be considered in the light of this privilege being exercised with all due caution. Cumulatively, the facts in this case completely satisfies the Board that the exercise of its discretionary powers is fully warranted. The case of Glen MacKinnon, Sylvan Gallant, Zoel Arsenault, Reuben Feehan, et. al. Employees of B-Line Construction v. International Brotherhood of Electrical Workers, Local 1432, and B-Line Construction (Trade Name) a Division of N. A. S. Holdings Ltd., is distinguished on its facts. The Board, in that instance, was prepared to exercise the discretionary powers "... if there was a compelling reason why the Form 10 could not have been filed..." In the instant case, not only was there a compelling reason why the document was not filed, but, in fact the document could have been filed within the limitation period, but for the misinterpretation of the consultation with an ostensible representative of the Board.*

In most, if not all, cases that come before the Board, it is charged with balancing interests and rights, and in the majority of cases there are four sets of interests and rights to be balanced with the underlying, paramount intent of promoting harmonious labour relations within the Province. Two of those sets of interests and rights are those of organizations, being the Applicant Union and the Respondent Company/Employer. The two other two sets are individuals' interests and rights, being those of the employees that desire representation and those employees who do not want representation through collective bargaining. On the basis of these authorities cited and quoted above, this Board is of the opinion that it is quite trite law that the enlargement of time is an exercise of a discretionary power. It is a remedy granted only in appropriate circumstances.

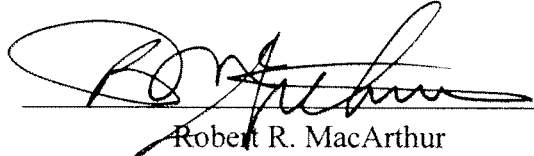
In setting the terminal date it was once the practice of the Board to set the terminal date two weeks hence of the receipt of the application and in many cases there was a verbal request for extension of time to file a reply. The Board therefor adopted a practice of setting the terminal date at three weeks from the delivery of the application to the Respondent.


The Respondent in this case has given an explanation and cited an "unintentional administrative error" as the main cause of delay and the main reason for its request for the extension of the terminal date. The Board accepts that there was a delay and that it was unintentional.

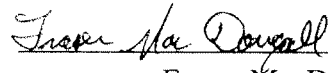
The Applicant has cited its reasons for not consenting to the request for extension of the terminal date. The Board accepts those reasons. The Applicant has every right to and has very valid reasons to withhold its consent to the motion in this instance.

That being said the Board has turned its attention to its duty to the balancing of all the rights and interests involved in this matter. As directed in its letter to the Respondent, it is a requirement of the process that the Application be posted. In the facts of this case the application apparently was not posted until probably February 6, 2004. It is the Board's considered opinion that in the spirit of balancing all the rights and interests of the parties and individuals involved that an extension of the terminal date is warranted in this case.

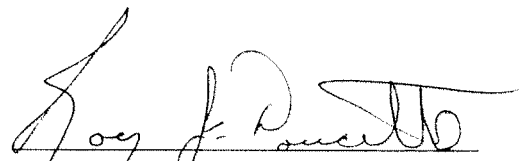
The Respondent's Motion for the seven day extension of time of the terminal date is denied. The Board rules that the terminal date is extended four days to the close of business on the 17<sup>th</sup> day of February, 2004.

  
Robert R. MacArthur  
Chair

  
Ray McBride  
Member

  
Fraser MacDougall  
Member

This Decision made by the Prince Edward Island Labour Relations Board on the 13th day of February, A.D., 2004, and issued under the hand of its Chief Executive Officer on the 25th day of February, A.D., 2004.

  
Roy J. Doucette  
Chief Executive Officer