



File No. 97-022

Decision No.

IN THE MATTER OF THE APPLICATION FOR CERTIFICATION

BETWEEN:

**PANS - CITY OF SUMMERSIDE POLICE DEPARTMENT
APPLICANT**

AND:

**CITY OF SUMMERSIDE
RESPONDENT**

AND:

**CANADIAN UNION OF PUBLIC EMPLOYEES, LOCAL 1174
INTERVENOR**

**Council for Applicant:
Council for Intervenor:
Representative of Respondent:**

**David Fisher
Susan Coen
Jock Jardine**

DECISION

BACKGROUND

The Police Association of Nova Scotia submitted an Application on March 25, 1997, to certify all full-time and part-time police and civilian employees below the rank of Chief of Police employed by the City of Summerside Police Department. A terminal date for reply was set for April 18, 1997.

Notice of the Application was sent to the Canadian Union of Public Employees and the City of Summerside on March 27, 1997. An intervention by the Canadian Union of Public Employees was received on April 18, 1997. The intervention specifically set out their grounds of objection. The Canadian Union of Public Employees advised that they were certified as the Bargaining Agent for the proposed unit of employees and a party to a collective agreement with the employer. The term of the collective agreement was from the first of April, 1993, to March 31, 1996. Local 1174 gave notice to bargain on February 20, 1996. After ongoing bargaining, the parties are now seeking binding arbitration. A second ground was in reference to the City of Summerside Act, as amended and assented to on May 4, 1995.

The Canadian Union of Public Employees particularly drew the Board's attention to Section 6 of the Amendment which amended Schedule 2 of the said Act and, in particular, the introduction of Section 4.1 to Schedule 2 of the Act in which subsection (6) stated:

“(6) For greater certainty, it is declared that

(a) the Labour Relations Board has no jurisdiction over the matters described in clauses 4(a) to (d);

(B) subsection 7(2), sections 12 to 18, section 20, section 38 and subsections 39(2) to (6) of the Labour Act do not apply to the city, a sewerage and water utility, or any of their employees.

(7) Subsection (6) ceases to have effect on such date as the Lieutenant Governor in Council may determine.”

A hearing was convened to determine the Labour Relations Board's jurisdiction to entertain and hear the Application by the Police Association of Nova Scotia.

Council for the Canadian Union of Public Employees, argued that there were two issues for the Board to hear and determine. She suggested the Act to amend the City of Summerside Act and, particularly, the introduction to the City of Summerside Act of 4.1, subsections (6)(a), (6)(b) and (7) to Schedule 2, gave the Lieutenant Governor in Council the exclusive power to determine when the transition period finished so that the suspended sections of the *Labour Act* would apply to the City of Summerside and its employees.

She further argued that if the Board determined that it had the jurisdiction to determine when the transition period was over, then the Board must hear evidence to determine whether, in fact, the transitional period had expired since the Act itself did not provide a specified ending date.

The parties agreed to argue the first element of her objection, namely, that it was not within the Board's jurisdiction to determine when the transition period is over.

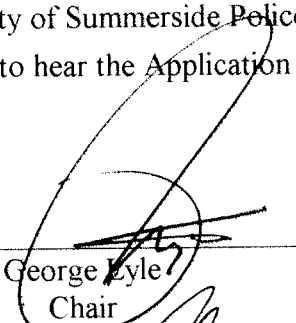
The Council for the Police Association of Nova Scotia, Mr. David Fisher, suggested that to give effect to the meanings of the words “have effect”, within the provisions of paragraph (1) of Schedule 2, would transfer to the Board, the power to determine whether, in fact, the transitional period has been completed. His argument was that if the Board was to determine that the transitional period was over, then the terms and conditions as set out in Schedule 2 would have no further affect since the conditions and restrictions set out therein could only apply during the transitional period. This gave to the Board the power to assume jurisdiction and take authority over the Labour Relations of the City of Summerside if the transitional period was over.

DECISION

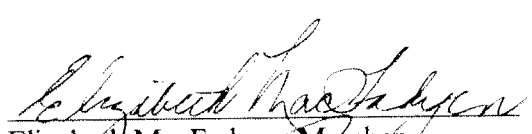
The Board rejects the argument by the Police Association of Nova Scotia that subsection (1) of Schedule 2 provides to the Board authority to determine when the transitional period ends and thereby silence the provisions of Schedule 2.

The members of the Board unanimously agreed that the Board was not empowered to determine the end of the transitional period. The Act was quite specific and required an Order from the Lieutenant Governor in Council to withdraw the provisions of Schedule 2 of the City of Summerside Act and reinstate the Board's jurisdiction to Labour Relations within the City of Summerside. The Board acknowledges that its authority comes directly from the *Labour Act* and can be suspended by Statute. The City of Summerside Act gives to the Lieutenant Governor in Council the constitutional authority to amend the jurisdiction of the Board and declare when the transition period is over. The legislative authority was delegated to the Lieutenant Governor in Council to reinstate the Board's jurisdiction either wholly or in part.

The Board directs that the Application by the Police Association of Nova Scotia to be the certified bargaining agent for all full-time and part-time police and civilian employees below the rank of Chief of Police employed by the City of Summerside Police Department be rejected on the grounds that the Board has no jurisdiction to hear the Application at this time.



George Lyle
Chair

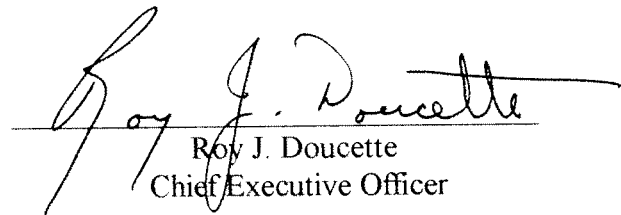


Elizabeth MacFadyen, Member



Gerry Doyle, Member

THIS DECISION made by the Labour Relations Board on this 25th day of August, 1997 and issued under the hand of its Chief Executive Officer on September 5, 1997.



Roy J. Doucette
Chief Executive Officer