

File No. 99-017

Decision No.

IN THE MATTER OF AN APPLICATION FOR REVOCATION OF CERTIFICATION ORDER

BETWEEN:

MARGARET WILLIAMS

APPLICANT

AND:

**UNITED FOOD AND COMMERCIAL WORKERS
UNION, LOCAL 864**

RESPONDENT

Representative of the Applicant

**Margaret Williams, on her
own behalf**

Counsel for the Respondent

Eugene P. Rossiter, Q.C.

DECISION

BACKGROUND

1. An Application for Revocation of Certification Order 15-93 was filed with this Board on requisite Form 7, the 25th day of November, 1999.
2. The Respondent, UFCW, Local 864, through its legal representative filed a letter dated December 6, 1999, and received on December 9, 1999, which set out the UFCW position that an Application for Revocation of Certification at this time with respect to the Charlottetown IGA would be premature. That letter, of course, went on to cite a number of reasons as to why the UFCW, Local 864, took that position.
3. The Board, through the Chief Executive Officer, has facilitated the exchange of the documentation submitted by the parties. The Chief Executive Officer has also ascertained that the parties neither requested nor indicated a desire for further written or oral argument before a panel of the Board.
4. The panel met to consider the issues raised by this matter on Wednesday, the 15th of December, 1999.

STATUTES CITED:

1. Labour Act, R.S.P.E.I., 1998, Cap. L-1, Sections 20 and Section 12
2. Labour Act Regulations, Sections 13, 14 and 15

3. George Adams, Canadian Labour Law (Second Edition), page 12-18 to page 12-20

ISSUES:

The issue to be addressed by the Board in this matter is whether the application filed by Margaret Williams was done in a timely manner and in accordance with the provisions of the legislation and the collective agreement.

CONCLUSION:

The Board has given very careful consideration to the materials filed by the respective parties in this matter. On the basis of that examination, the Board makes these findings of fact. First, that the collective agreement between Charlottetown IGA, Prince Edward Island, and United Food and Commercial Workers Union, local 864, was "Executed this 1st day of April, 1997", as set out on the title page of that subject agreement. Further, the applicant's own form 7 filed in this matter, stipulates at Paragraph 3:

"3. Is there a collective agreement affecting employees in the bargaining unit? If so, state commencement date and expiry date. April 1/1997, Dec.30/2000"

As was noted by the legal counsel for the Respondent, the agreement is void of any reference to retroactivity of the collective agreement before the date it was executed and/or the effective date as established by the evidence on Form 7 above. The Board has compared this collective agreement with the previous collective agreement between the parties and noted that, unlike most other collective agreements, there is no specific reference to a commencement date. This fact offers little assistance to the Board in reaching a decision on the matter currently before it. It certainly might have implications for future negotiations between the parties.

The Board now turns to the provisions of the legislation, in particular the provisions of Subsection 12.(5) of the Act. It reads:

12. (5) Where a collective agreement is in force and the agreement is for a term of more than two years, the application may be made only after the commencement of the twenty-third month of the term and before the commencement of the twenty-fifth month of the term and during the two-month period immediately preceding the end of each year of the term that the agreement continues to operate thereafter or after the commencement of the last two months of the term, as the case may be."

Adams on Canadian Labour Law, on the topic of duration clauses states as follows:

"The purpose of specifying the term is to ensure the parties who may want to terminate a union's bargaining rights will know the timing of the "open periods" for termination of certification application. The Ontario board outlined these considerations in *Milltronics Ltd.*:

Because the timeliness of certification and termination applications is calculated with reference to the open period of the collective agreement, that agreement must have a specified term. There must be a fixed, and readily ascertainable, termination date so that dissatisfied employees will know when a certification or termination application can be made, and a "raiding union" will know when to commence its organizing campaign. The requirement for a specified term of operation is provided in ...the Act, and the Board has generally held that since the rights of employees and third party unions may be affected, the term of operation must be clear and explicit on the face of the document constituting the collective agreement.

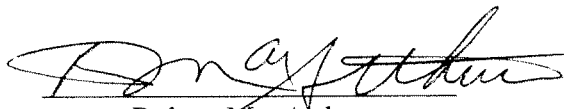
Indeed, it is because of these third party interests that ...the Act prohibits the primary contracting parties from terminating their agreement before it ceases to operate in accordance with its terms, without the express consent of the Labour Relations Board. This statutory provision preventing the parties from altering the term of their agreement would appear curious if one were unaware that important third party interests and statutory rights are directly related to, or contingent upon, the duration of the agreement.

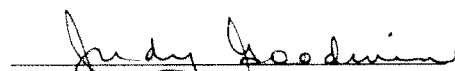
These third party rights are essential to the public order achieved by the statutory regulation of collective bargaining rights and obligations. An identifiable term is necessary to avoid the confusion and disarray that would be caused by multiple expiry dates. For similar reasons, it has been held that where there is an industry-wide contract in the construction industry, it is binding regardless of the duration of individual contracts signed when the industry-wide agreement is picked up by independent employers. Where an agreement is made retroactive, the commencement date will be the date stipulated by the parties from which the agreement is to operate unless this would result in a violation of the governing statute or an absurdity, in which cases the commencement date will be construed as one that satisfies legal and practical considerations.”

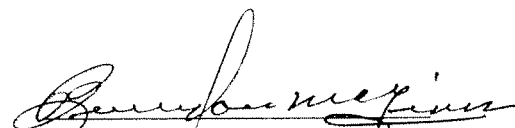
Considering the provisions of Subsection 12.(5) and this collective agreement, the open periods would include the two month period commencing February 1, 1999, the two month period commencing February 1, 2000, and the two month period commencing October 31, 2000.

On the basis of its findings of fact, the current legislation and the noted authority, this Board has concluded that the Applicant's submission of an Application For Revocation of Certification Order is not timely and that the commencement date of this particular agreement was April 1, 1997.

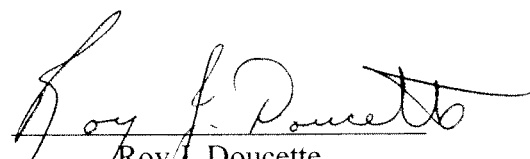
Therefore, the application made on November 25, 1999, is dismissed.


Robert MacArthur
Chair


Judy Goodwin
Member


Brendon McGinn
Member

This Decision was made by the Labour Relations Board on December 16, 1999, and issued under the hand of the Chief Executive Officer on December 22, 1999.


Roy J. Doucette
Chief Executive Officer