PRINCE EDWARD ISLAND
LABOUR RELATIONS BOARD

File No.

Decision No.
01-029

IN THE MATTER OF AN APPLICATION UNDER SECTION 4 OF THE ACT (APPLICATION FOR RECONSIDERATION)

BETWEEN:

UNITED FOOD AND COMMERCIAL WORKERS UNION, LOCAL 864

APPLICANT

AND:

POLAR FOODS INTERNATIONAL INC., CARRYING ON BUSINESS UNDER THE FIRM NAME AND STYLE OF POLAR FISHERIES

RESPONDENT

Counsel for Applicant: **Eugene P. Rossiter, Q.C.**

Counsel for Respondent: **Mark Ledwell, Murray Murphy, and Clea Ward, Articled Clerk**

DECISION

BACKGROUND

On 22 October 2001 during proceedings on matters of Applications for Certification between these parties, the Applicant, United Food and Commercial Workers Union, Local 864, filed with the Board an application, pursuant to Section 4 of the *Labour Act*, and Section 18 of the *Labour Act Regulations*, requesting that the Board reconsider its decision issued on the 7th day of June 2001 by amending the decision and resulting order of the Prince Edward Island Labour Relations Board by the deletion therefrom of paragraph (e) on page 27 thereof, and replacement thereof with the following:

> *No collective agreement shall be binding upon the parties unless it has been approved by the Prince Edward Island Labour Relations Board.*

The Board heard submissions from counsel for both parties in regards to this Application for Reconsideration and reserved decision on the matter.

Cases Considered

(a) *Trigen. Energy Canada Inc. and Trigen PEI* v. *The International Brotherhood Of Electrical Workers, Local 1432*, (Unreported, P.E.I.L.R.B., June 23, 1999);
(b) *Perfection Foods Ltd. v. RWSDU, Local 1515* (1986), 57 Nfld. PEIR 147 (PEISC).

Statutes Considered

(a) ***Labour Act***, R.S.P.E.I. 1988, Cap. L-1, Sections 4 and 11; and

(b) ***Labour Act Regulations***, Section 18.

Evidence

There was no evidence called on behalf of either the Applicant or Respondent in regards to this Application. There was presented, as summarized by and confirmed by respective counsel, anecdotal evidence with respect to the events that have unfolded in regards to the efforts of the parties to comply with the provisions of the Board's June 7, 2001 decision and resulting order.

Issue

The question before the Board is whether the circumstances exist that would both enable and also justify an exercise of the Board's discretionary power to vary its previous order.

Findings of Fact

It is a matter of record that there were complaints of Unfair Labour Practices made by the United Food and Commercial Workers Union, Local 864, *et al*, against Polar Foods International Inc., *et al*, which were filed with the Board in February of 2000 relating to its Summerside division. The decision in regard to that matter was issued by the Board on the 7th day of June, 2001, which found the Respondent, Polar Foods International Inc., guilty of Unfair Labour Practices, and ordered, at page 27 thereof, in part as follows:

> *c) the United Food and Commercial Workers Union, Local 864, is certified as bargaining agent for the unit of Employees described as all Employees of Polar Foods International Inc. employed at the corporation's plant known as "Polar Fisheries" in Summerside, Prince County, Province of Prince Edward Island, excluding the Plant Manager, Office Clerical and Administrtive Staff and all other Employees above the rank of Production Supersivor/Foreman/Lead Hand;*
>
> ...

e) *no Collective Agreement shall be binding upon the parties unless it has been approved by a majority vote by secret ballot of all the members of the "unit" who choose to vote; and ...*

Prior to issuance of the June 7, 2001, decision of the Board, the Respondent initiated a new method of hiring its employees on an annual basis at its various plants which dispensed with the previous practice of the re-calling of previous employees. The Respondent implemented the practice of placing local newspaper ads requiring any interested persons to attend the local plant and complete an application if they wished to be considered for employment in the upcoming production year.

Attempts to negotiate a Collective Agreement were, at best, unsuccessful.

The Polar Fisheries processing plant in Summerside was closed on August 21, 2001, and, as of the date of this Application, remained closed. The Applicant therefore has no way of determining who is a member of the unit nor has any effective means of communication with the members of the unit.

Decision

Careful consideration has been given to the anecdotal evidence submitted and all of the submissions presented respecting this application and the issue it raises. The Board is particularly mindful of the fact that, while the Applicant has proposed the amendment of the Board's June 7, 2001 decision, more importantly the Respondent has granted consent to this amendment. This is of particular importance in that the Board in no way is imposing a Collective Agreement on the parties, nor is it invoking its powers to do so.

What the Board is doing is considering if the circumstances permit and justify an exercise of its discretionary powers to vary a previous Order. In its decision in *Trigen. Energy Canada Inc. and Trigen PEI* v. *The International Brotherhood of Electrical Workers, Local 1432*, this Board stated:

> *The Board raised the preliminary matter of the "threshold test" by which applications for reconsideration would be reviewed. The Board noted that section 4(1) of the Act empowers the Board to reconsider its decisions and Section 18 of the Regulations sets out a three (3) part threshold test which reads:*

> *Where it appears that the Board has made a decision in ignorance of some material fact, or by reason of some technical irregularity, or if there is good reason for the Board doing so, the Board may entertain an application to reconsider a decision or order made by it under the Act.*

It is the considered opinion of this Board that the "threshold test", in all the circumstances of this case, have been met on two of its three parts. In making the Order of June 7, 2001 the Board acted in ignorance of the material fact of the change in the hiring practice of the Respondent and its ultimate effect of creating difficulty in determining the actual members of the bargaining unit and difficulties in the Applicant's communications with those members. Further, the facilitation of progress on this one issue of a number of the labour relations issues that face these two particular parties is, in this Board's considered opinion, "good reason" for granting the relief that is being sought and consented to by the respective parties.

While the *Act* prescribes that Collective Agreements are to be filed with the Minister, the Board has not been in the practice of "approving" Collective Agreements. However, the Board is possessed of the broad scope of powers under Subsection 11(3) of the *Act* to *"... by order, make such award, give such direction, or take such other action as the board considers just and necessary in the circumstances..."*. The decision of Chief Justice Carruthers in *Perfection Foods Ltd. v. RWSDU, Local 1515* (1986), 57 Nfld. PEIR 147 (PEISC) ratifies the Board's possession of these broad powers. The circumstances of this particular case are exceptional circumstances, the parties have proposed and consented to the amendment's wording, and the Board considers that this action is both just and necessary in this particular instance.

The Board is mindful of the legislative mandate to consider the rights of all concerned parties the Applicant Union, the Respondent Employer, employees desirous of being represented in a collective bargaining unit by the Applicant, and those employees not wanting membership in nor representation by the Applicant Union. While two of those four groups, the Union and the Employer, are being directly active in this solution the employee groups are not as directly involved in this particular process. In light of that situation, the Board reminds all concerned of the provisions of Section 20 of the *Labour Act* entitled Revocation of Certification. Subsection 20(1) reads:

> *20.(1) An employer or a trade union named in a certification order or any employee in a unit for which a trade union has been certified as bargaining agent by such order may apply to the board for the revocation of such certification on the ground that a majority of the employees in such unit no longer wish to the trade union to act as bargaining agent on their behalf.*

Summary

In summary, the Board rules that the circumstances of this case present a situation where the requirements of Section 18 of the Regulations are met and the considers it advisable to exercise its discretionary power under Section 4 of the Act to vary its order of June 7, 2001 to the extent that paragraph (e) appearing at page 27 of that decision is revoked and is replaced with the ruling that:

e) No collective agreement shall be binding upon the parties unless it has been approved by the Prince Edward Island Labour Relations Board.

The Board further rules that a copy of this decision will be posted in each of the nine (9) of the Respondent Employer's processing plants and served upon the respective legal counsel.

Robert R. MacArthur
Chair

Elizabeth MacFadyen
Member

Gerald Doyle
Member

This Decision was made on the 22nd day of October 2001 and issued under the hand of the Chief Executive Officer on 22nd October 2001. .

Roy J. Doucette
Chief Executive Officer