



File No. 02-063

Decision No.

IN THE MATTER OF AN APPLICATION FOR CERTIFICATION

BETWEEN:

ATLANTIC MEATPACKERS UNION

APPLICANT

AND:

GARDEN PROVINCE MEATS INC.

RESPONDENT

AND:

**UNITED FOOD AND COMMERCIAL WORKERS UNION,
LOCAL 864; GEORGE P. FISHER; and KEVIN GALLANT**

INTERVENORS

DECISION

**Counsel for the Applicant
Counsel for the Intervenor, United & Commercial
Workers, Local 864
George P. Fisher
Kevin Gallant**

**Ron Stockton
Eugene P. Rossiter, Q.C.
representing himself
representing himself**

Background of Application for Certification

1. On August 15, 2002, the Applicant, Atlantic Meatpackers Union (AMU) filed with the Prince Edward Island Labour Relations Board, (the "Board"), an Application for Certification in Form 1. Attached to Form 1 for the employees of Garden Province Meats Limited were the following documents, namely:
 - a) Exhibit "A", being the Constitution of the AMU;
 - b) Exhibit "B", being a list of duly elected Officers of the AMU; and
 - c) Exhibit "C" containing a two page list of members in good standing.

Also filed with the Application for Certification were the cards signed by various members.

2. On September 12, 2002, the Board received a facsimile from Ron Stockton, Counsel for AMU, enclosing a document entitled Supplementary to Exhibit "C", being an additional list of members in good standing.

3. The Chief Executive Officer of the Board set September 13, 2002 as the terminal date. A Reply to the Application for Certification was filed by Garden Province Meats Inc. ("Garden Province") in Form 5 on September 6, 2002, together with a Seniority List as of September 4, 2002.
4. A Notice of Intervention was filed on behalf of United Food and Commercial Workers Union, Local 864 ("UFCW") on September 13, 2002.
5. Additionally, correspondence dated September 5, 2002, from Kevin Gallant was forwarded to the Board and received on September 9, 2002. Correspondence dated September 12, 2002, from George P. Fisher was also forwarded to the Board by registered mail on September 13, 2002 and received on or about September 17, 2002.
6. The Board scheduled December 19 and 20, 2002 as the dates for the hearing of the Application for Certification. The hearing convened on December 19, 2002, and was continued on December 20, 2002 and February 20, 2003.

Statutes Considered

Affidavits Act, R.S.P.E.I. 1988, Cap. A-7;

Interpretation Act, R.S.P.E.I. 1988, Cap. I-8

Labour Act, R.S.P.E.I. 1988, Cap. L-1;

Regulations Considered

Labour Act Regulations, (P.E.I.);

Authorities Considered

National Automobile, Aerospace, Transportation and General Workers Union of Canada (CAW-Canada) and Allied Signal Aerospace Canada, No. 98-009 February 1, 1999 (P.E.I.L.R.B.)

Atlantic Meatpackers Union v. Garden Province Meats Inc., United Food and Commercial Workers Union, Local 864 and George P. Fisher, No. 01-027, February 13, 2002 (P.E.I.L.R.B.)

Canadian Union of Operating Engineers v. Wellesley Hospital v. Building Service Employees' International Union, Local 204, Intervenor #1 v. International Union of Operating Engineers, Local 796, Intervenor #2, 1969 CarswellOnt 413 (O.L.R.B.),

Britco Structures Ltd. and United Brotherhood of Carpenters and Joiners of America, Locals Nos. 1928, 2511, 2861 and 2076, No. 295/83 (B.C.L.R.B.)

Association of Nurses St. Joseph's Hospital London v. Sisters of St. Joseph of Diocese of London, in Ontario, 1972 CarswellOnt 745 (O.L.R.B.)

C.J.A. v. Repa Ltd., 1990 CarswellOnt 1185 (O.L.R.B.)

Alberta Union of School Employees Local 100, and Edmonton Separate School Board and Canadian Union of Public Employees Local 763, [1987] Alta. L.R.B.R. 529 (Alta.L.R.B.)

Opera Ghost Productions Inc., [1990] O.L.R.B. Rep. March 325 (O.L.R.B.)

B.C. Hotels Association and Greater Vancouver Hotel Employers Association et al., No. 170/83, 1983 (B.C.L.R.B.)

TNG Canada/CWA v. The North Bay Nugget, [2002] O.L.R.D. No. 1363 (O.L.R.B.)

Canadian Labour Congress v. University of Toronto, The Governing Council, [1999] OLRB Rep. July/August 742 (O.L.R.B.)

Construction and General Labourers Union, Local 1079-A and Gulf Island Peat Moss Co., Inc., No. 92-024, December 29, 1992 (P.E.I.L.R.B.)

Canadian Paperworkers Union Local 167 and Schurman Industries (a division of Schurman Enterprises Ltd.) and United Brotherhood of Carpenters and Joiners of America, Local 1338, (Under Supervision) 89-021A, 89-021B, May 16, 1991 (P.E.I.L.R.B.)

Mecanobus Ontario Ltd., [1996] O.L.R.D. No. 1770 (O.L.R.B.)

I.A.M., Local 717 v. Canada Valve Ltd., 1980 CarswellOnt 1112 (O.L.R.B.)

National Automobile, Aerospace and Agricultural Implement Workers' Union of Canada (CAW-Canada) and Garden Province Meats (1985) Inc. and United Food and Commercial Workers Union, Local 1252 (In Trusteeship) and United Food and Commercial Workers International Union, No. 87-003, 87010/88-018, January 31, 1989 (P.E.I.L.R.B.)

Cable Television Workers' Association and Graham Cable TV/FM, Toronto, Ontario (1986), 14 CLRB (NS) 250 (Can.L.R.B.)

Giant Mines Employees Assn. v. Royal Oak Mines Inc., 1993 Carswell NWT 30 (N.W.T.Can.L.R.B.)

Covertite Eastern Ltd., [1996] OLRB Rep. May/June 386 (O.L.R.B.)

District 69 Health Care Society Operating Eagle Park Health Care Facility and Health Employers' Association of British Columbia and Eagle Park Employees Association and Hospital Employees Union, BCLRB No. B193/95, May 25, 1995 (B.C.L.R.B.)

Harbour Electric Ltd. v. I.B.E.W., Local 213 & 230, 1999 CarswellBC 3020 (B.C.L.R.B.)

U.A.W. v. Centre Tool & Mold Co., 1985 CarswellOnt 1213 (O.L.R.B.)

Chemistry Graduate Students' Assn. of University of Ottawa v. University of Ottawa, 1981 CarswellOnt 863 (O.L.R.B.)

Windsor Raceway Union, Local 639 affiliated with Service Employees International Union Afl-Cio-CLC v. Windsor Raceway Holdings Ltd. v. Hotel and Restaurant Employees Union, Local 743, 1979 CarswellOnt 1076 (O.L.R.B.)

S.I.U. v. Verreault Navigation Inc., 1981 CarswellNat 670 (Can.L.R.B.)

Canadian Union of Construction Workers v. Zachary de Vuono Ltd. v. Labourers' International Union of North America Local 506, 1969 CarswellOnt 550 (O.L.R.B.)

TNG Canada/ICWA Local 199 U.A.W. Building Corporation, [1972] O.L.R.B. Rep. July 472 at paragraph 10.

IMP Manufacturing Employees Association, [1979] 3 Can.L.R.B.R. 264

Canadian Maritime Union (CLC) v. Underwater Gas Developers Ltd., [1967] O.L.R.B. Rep. 555 (O.L.R.B.)

Ontario Haulers Union v. Repac Construction & Materials Ltd., [1977] O.L.R.B. Rep. Sept. 582 (O.L.R.B.)

Brant County Board of Education v. Female Office Employees' Assn., [1979] O.L.R.B. Rep. Feb. 70 (O.L.R.B.)

United Steelworkers of America Local 5013 v. Vicwest Steel Inc., and Westeel, a Division of Jannak Limited and Marclin Westeel Ltd., [1987] Alta. L.R.B.R. 572 (Alta.L.R.B.)

International Paper Industries Ltd. and Paper Recyclers Employee Association and Canadian Union of Public Employees ("CUPE") (1989), No. C235/89. (B.C. Ind. Rel. Council)

Texts Considered

Jeffrey Sack, Q.C. & C. Michael Mitchell, *Ontario Labour Relations Board Law & Practice* (Toronto: Butterworths, 1985)

Jeffrey Sack, Q.C. & C. Michael Mitchell, *Ontario Labour Relations Board Law & Practice*, 3rd ed. (Toronto: Butterworths, 2000)

Motion to Consolidate

7. Prior to the hearing on the Application for Certification commencing, Counsel for UFCW made a motion to consolidate the Application for Certification with an Unfair Labour Practice Complaint that had been filed by UFCW on September 13, 2002 against Garden Province Meats Limited. Garden Province had apparently filed a Reply on or about September 25, 2002 denying the allegations.
8. On December 19, 2002, the Board received correspondence from Sunrise, signed by Wayne Matchett, Director of Human Resources and addressed to the Board, which indicated the following:

We have been advised by both the P.E.I. Labour Relations Board, as well as UFCW, Local 864, of the intention of UFCW, Local 864, to make a consolidation motion to consolidate the Unfair Labour Practice Complaint and the AMU Certification Application.

We confirm we are aware of the motion to be made by UFCW, Local 864, to consolidate the outstanding Unfair Labour Practice Complaint with the outstanding Certification Application by the AMU presently being heard before the P.E.I. Labour Relations Board.

We consent to such consolidation, and do not intend to appear.

We are also in receipt of an Amended Unfair Labour Practice Complaint by the United Food and Commercial Workers Union dated December 18, 2002. We have reviewed this Amended Unfair Labour Practice Complaint. Please treat this correspondence as our admission to the contents of the allegations contained therein. It is not our intention to appear on any aspect of this Unfair Labour Practice Complaint, and we await the Board's Order in relation to the complaint.

9. The Unfair Labour Practice Complaint had not been scheduled to be heard on December 19, 2002, nor did the Board have in its possession the Amended Unfair Labour Practice Complaint referred to in the correspondence of Mr. Matchett.
10. After hearing representations from the parties, on December 19, 2002 the Board verbally denied the Motion to Consolidate and indicated it would proceed to hear the Application for Certification.
11. Subsequent to the Board's ruling, counsel for AMU indicated that if the aforesaid Unfair Labour Practice Complaint was going to be heard, AMU would want Intervenor status. The Board did not make a ruling in relation to AMU having Intervenor status but rather determined to proceed with the Application for Certification currently before it.

Evidence

12. AMU called 2 witnesses to support its case, namely Paul Saunders, the President of AMU and Mark Chiasson.

13. Paul Saunders became President of AMU at the second founding meeting and he indicated that position was reaffirmed when “*we were later certified.*” He was previously employed at Larsen Packers in Berwick, Nova Scotia, although he is not employed at Larsen Packers presently. Mr. Saunders advised that the employees of Larsen Packers signed cards, paid the \$2.00 initiation fee, became members of AMU and now pay their dues regularly.
14. AMU was certified by the Labour Relations Board of Nova Scotia on November 9, 2001 to represent the employees of Larsen Packers. Exhibit A-1 was placed before the Board in this regard, being LRB Order No. 4948 which certified the Atlantic Meatpackers Union, Halifax, Nova Scotia as the bargaining agent for those employees employed at Larsen Packers Limited, Berwick, Nova Scotia.
15. Mr. Saunders then outlined the fact that AMU signed a new contract with Larsen Packers, dealt with outstanding grievances, and made arrangements to deal with benefit and pension plans.
16. Mr. Saunders indicated that the employees of Garden Province had applied for certification about the same time as “*we did*” somewhere around 2001. He indicated he had helped with the card signing campaign at Garden Province and with the Application for Certification which was rejected by the Board previously. He indicated that as a contract was not signed at Garden Province, the employees of Garden Province could start a new campaign (presumably referring to the fact that the legislation prescribes a period of time whereby the employees can seek to change the union representation they currently have). Mr. Saunders described the current Application for Certification in this fashion, namely: “... *So they were able to start another – a new application for – this time it’s direct recertification.*”
17. In response to a question as to whether the Application for Certification that is currently before the Board is different from the one the Board previously dismissed, Mr. Saunders testified that the AMU had agreed to take in this group of employees from Garden Province. Mr. Saunders further testified as follows:

... It’s my understanding that the application last time was calling for an open vote, the Labour Board to conduct an open vote and get the members’ decision. And it was done as, the AMU being an independent identity - which would put them, like, on even ground just as we were doing in Nova Scotia. I guess there were some technicalities. It was thrown out. This time here, they’re coming on as a partner or affiliation with the AMU in Nova Scotia or Berwick. And this time here, we’re asking for a direct recertification.
[Emphasis added]

18. In regard to the formation of AMU, the evidence before the Board was that Mr. Saunders was the President, Leon Gray is the Secretary, the Vice-President is Allan Daziel, and Treasurer is Linda Dorey. A copy of the Constitution of AMU [Exhibit A-4], was placed before the Board which he indicated was the Constitution of the AMU. He indicated that this Constitution contains an amendment that was made after being advertised, posted on bulletin boards and a motion made and passed at a properly conducted general membership meeting. The Amendment was to other unions or groups to join AMU. Article 9 of the Constitution states as follows:

Article 9 – Associations and Affiliations

9.1 The Union may, upon notice, by a majority vote of the membership in attendance at a General Meeting, associate, affiliate or merge with any other group(s) or Union(s).

9.2 The Union may establish locals which shall be responsible for the administration of local affairs. Each local shall elect its own executive and provide for by-laws for its own governance.

We will be AMU Local #1. PEI separate certification – AMU Local #2.

If there is more than one local of the union each shall appoint at least one (1) executive member to act as a liaison with other locals.

19. In regard to questions regarding the above-noted Amendment to the Constitution of AMU, the following exchange occurred between Counsel and Mr. Saunders:

Question Okay. And the – what does 9.2 do for the union?

Answer: Well, previously we were told we hadn't made provisions in our constitution to, to join with any other, or have any other unions or groups join us.

Question: Umhum.

Answer: And so I put together this line, which – to make that, that opening. We wanted to, to invite PEI to affiliate with us. And we thought this would be a more direct of getting past the certification situation here on the Island. And we were also hoping to, to join others to us. So, we put in, this provision into the constitution to help that, to allow that to happen, because we were advised that we didn't have a provision there at that time. This was put in, like I say – it's worded more to the opinion that, to allow it to happen and also to try and, you know, give some, some confidence to our present members, you know, of how it was to be established, so that they would understand, the business arrangement.

Question: Okay. Now, let's say, for example, that the PEI group comes in with the Atlantic Meatpackers Union. That they're certified. That the Atlantic Meatpackers is certified to represent them.

Answer: Hooray.

Question: Pardon?

Answer: Hooray.

Question: Yes - If that happens, then, will they come under the auspices of the Atlantic Meatpackers Union?

Answer: Yes, they will.

Question: And following certification, what will happen then?

Answer: What will happen then is we will see that they advertise a meeting and elected their own executive officers. And –

Question: Umhum.

Answer: - committees and to, for their governance.

Question: Okay, and they would still be affiliated and a member of the Atlantic Meatpackers Union?

Answer: Yes, they would.

Question. Okay. And what would happen to the Atlantic Meatpackers Union in Berwick?

Answer: Well, that's why we put the designations in there and they're simply as an example, because it, as you know, PEI aren't certified yet. So this strictly is an example, to, like, say, to add some confidence to our members of how the governance –

Question: Umhum.

Answer: - or how the business would be.

Question: Okay.

Answer: But we, we established that the Berwick Council – we have an Executive Council, is for our constitution – they would still maintain and govern and control the assets and business at the Berwick plant and we would call that Local 1.

Question: Umbum.

Answer: PEI would establish their council and take care of their own governance and we – like, say, for example here, we call PEI being Local 2.

Question: Umbum. And the – and so that's an administrative matter?

Answer: Yes. It's just purely administration. Just, like I say, it was –

Question: Okay. The –

Answer: - it was done as an example to allow, to set out how it would be done.

Question: Umbum. Okay. And would, under this provision, would the Atlantic Meatpackers Union be allowed to bring in other groups of employees, as well?

Answer: Yes, according to our constitution.

Question: Okay. And would they be allowed to assign them other local numbers if they chose?

Answer: Once they're certified.

20. In relation to what will happen if AMU is certified to represent the employees of Garden Province with specific reference to Article 9.2 in the Constitution, the following exchange took place between Mr. Saunders and Counsel for AMU:

Question: Umbum, okay. Now, if the Atlantic Meatpackers Union is certified to represent the employees of Garden Province Meats, I note that under Article 9.2 it says, we will be AMU Local 1. And you said that was an example. I presume that means Berwick?

Answer: Yes.

Question: And will that simply be a change of title, will you have to hold elections, or what?

Answer: It, it would just be a change of title. It would be an administrative thing, because we have an executive right now. That executive will still be the same. And, and, but we have an executive council that governs the situations for the Berwick location or what would then be called Local #1. But right now it's just AMU, because we have no other locals.

Question: Okay. So, the Executive Council of which you speak is not yourself, Leon Gray, Allan Daziel, and Linda Dorey?

Answer: No, we have six separately-elected members who, who are the councillors, and they tell us what they want done, you know, at the Berwick location. Or it's our only location right now. And you know, we carry out or if we want to spend money, we go to them, you know –

Question: Okay.

Answer: - and get it approved. So –

Question: And if – you've indicated that if you're certified for Garden Province Meats, they'll set up as Local 2. I think you indicated they'd have their own executive?

Answer: Yes.

Question: And would they carry out the same role with respect to Garden Province Meats?

Answer: Yes, they would.

Question: Governance and so –

Answer: Yes. That's clearly stated there.

....

Answer: So, it's just to – we feel that the future in unionism is that the people can best serve themselves

Question: Umhum.

Answer: And they're better informed if they have that connection and they're more involved and that, they know they have to be. And by taking care of themselves that way, you know, we would be over there taking care of ourselves with our Executive Council and that, and they would be here with their own council and their committee members taking care of themselves. We feel that we can keep a liaison, which is also mentioned in there, to help things along. If they have a stumbling block or a question or a situation comes up, they can connect us and ask us how we might handle it. And they can take our suggestions or they can, you know –

...

21. In response to a question from a Board member, Mr. Saunders indicated that AMU is governed by a six member Executive Council, often referred to as Executive Councillors. These are the individuals that do most of the decision making and he stated “*the real power is in that executive council*”. In response to whether or not the Executive Council at the Berwick plant would have anything to do with Garden Province, his response was: “*No it wouldn't. They [Garden Province] may choose to, and to the same political system we have or they may choose another.*” In fact he further indicated “*You know, they'd be responsible for their own governance.*”
22. On cross-examination, Counsel for UFCW essentially had Mr. Saunders identify various exhibits including:
- a) Exhibit R-1 – Application for Certification filed by Atlantic Meatpackers Union filed with the Board on September 28, 2001, together with copy of Constitution of Atlantic Meatpackers Union, Exhibit B to Application for Certification, being the list of duly elected officers and Minutes of the Founding Meeting [Paul Whiteway shown as President of AMU];
 - b) Exhibit R-2 – Flyer issued by the Atlantic Meatpackers Union on October 1, 2001 [President AMU – PEI, shown as Paul Whiteway];
 - c) Exhibit R-3 – Flyer of Atlantic Meatpackers Union issued December 4, 2001 [Paul Whiteway shown as President in Prince Edward Island];
 - d) Exhibit R-4 – Flyer entitled “Why Join the AMU? Independence!” [Paul Saunders shown as President, AMU];
 - e) Exhibit R-5 – Flyer issued regarding a meeting of Atlantic Meat Packers Union to be held on August 28, 2002 [Paul Saunders is listed as President];
 - f) Exhibit R-6 – notice of PEI Membership Meeting of Atlantic Meatpackers Union scheduled for November 12, 2002 [Paul Saunders noted as President];
 - g) Exhibit R-7 – flyer entitled “How Does the AMU (Atlantic Meatpackers Union) Work?” [Paul Saunders is noted to be President];
 - h) Exhibit R-8 – newsletter entitled “Happy Anniversary” [Paul Saunders listed to be President of Atlantic Meatpackers Union].
23. Mark Chiasson also testified. He indicated he is a member of AMU and had been Secretary and Treasurer of the Atlantic Meatpackers Union in the 2001 Application that was filed with the Board on September 28, 2001 [Exhibit R-1]. He identified the Minutes of the Founding Meeting for the Application filed with the Board by the Atlantic Meatpackers Union in 2001 attached to Exhibit R-1. He indicated that an initial meeting was held, he referenced the Constitution, and indicated that the executive was elected. He confirmed that Paul Whiteway had been elected President and confirmed that the Application for Certification

that was filed on September 28, 2001 “was tossed out.” In response to the Application for Certification that was currently before the Board, the following exchange took place between Mr. Chiasson and Counsel for AMU:

...

Question: Okay. The – now, that certification, that Application for Certification, as indicated, was tossed out. And you’re back here again on a new Application for Certification?

Answer: Yes.

Question: But it’s a different kind of application this time?

Answer: Yes.

Question: And you’re going in under –

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Question: - I think it’s been explained before – under the auspices of the parent AMU?

Answer: Yes.

Question: Yes, okay. And what –

...

Answer: The way, the way it’s explained to me and the way I understand it is that once – if the certification takes place, then we will elect our body over here and we will be responsible for our own affairs over here.

Question: Umhum., okay.

Answer: Paul has agreed to help us in any way he can with setting up, training, and I have no reason to believe otherwise.

Question: Umhum, okay. And is it – what’s your understanding with respect to whether or not the Constitution allows that kind of option? Just hold your answer until we get the door.

(Pause, knock at door)

Question: Okay. Just to repeat, I – my last question was, you had described about setting up your own executive and operation here to run your own affairs. And what’s your understanding of the constitutional authority for that? Does that constitution permit that and so on and so forth?

Answer: My understanding is that the constitution allows for that. And that’s what we intend to do. [Emphasis added]

24. There was a great deal of evidence given by Mr. Chiasson stating that AMU had not been favoured by the employer, Garden Province and that Mr. Chiasson had not received preferential treatment. The Board has not found it necessary to repeat this evidence or make any finding in relation to same as a result of the Decision it is rendering. After Mr. Chiasson’s evidence was concluded, AMU closed its case.

Motion for Early Dismissal

25. At the close of AMU’s case, Counsel for UFCW made a motion for early dismissal on various grounds including that AMU had not proved it was a trade union within the meaning of the *Labour Act*, R.S.P.E.I. 1988, Cap. L-1. There were other grounds on which the early

dismissal was sought which included an argument that the membership evidence that was filed with the Board did not fulfill the requirements of the *Labour Act*.

26. The Board heard submissions from Counsel for UFCW, Local 864, as well as submissions from Counsel for AMU in relation to the Motion for Early Dismissal.
27. Before going into the Motion in detail, the Board wishes to point out that on September 28, 2001, an Application for Certification was filed by Atlantic Meatpackers Union in relation to the employees of Garden Province Meats Inc. UFCW intervened in that Application and at the close of the case for the Atlantic Meatpackers Union, Counsel for UFCW also made a motion for early dismissal.
28. After reviewing the law and hearing submissions from the parties, on February 13, 2002, in the case known as **Atlantic Meatpackers Union v. Garden Province Meats Inc. and United Food and Commercial Workers Union, Local 864, and George P. Fisher, Intervenor**, (hereinafter referred to as “Atlantic Meatpackers Union No. 1”), the Board dismissed the Application for Certification on the grounds that the Applicant, Atlantic Meatpackers Union, **did not call any evidence to support its Application for Certification but rather relied on the documentary evidence that had been filed.** Since the documentary evidence that was necessary to prove trade union status, such as the Constitution, and the Minutes of the Founding Meeting were not part of any Affidavit or Statutory Declaration, they did not constitute evidence before the Board.
29. As noted *Atlantic Meatpackers Union No. 1*, the Board exercised its discretion in determining the motion to dismiss without making UFCW elect whether or not it intended to call evidence. In light of same, in the present case the Board reiterates the comments it made in *Atlantic Meatpackers Union No. 1* and finds that it has the discretion to determine whether or not the matter currently before the Board should be dismissed prior to determining whether or not UFCW intends to call evidence.
30. The Board, in *Atlantic Meatpackers Union No. 1*, outlined that the onus is on a trade union to prove its status by way of credible oral *viva voce* evidence in testimony that deals with the circumstances surrounding the formation of the union. The Board quoted authority to state that the mere submission of a Collective Agreement or a Constitution or even a Certificate from another Board will not suffice. The Board rendered a lengthy Decision outlining exactly what is required. In fact pages 17-20 of the *Atlantic Meatpackers Union No. 1* Decision are reproduced below:

*Accordingly, in the present case, the Board is left with a Statutory Declaration in Form 1 which makes absolutely no reference to any of the documents which are attached thereto. The attachments are the Constitution and the Minutes of the Founding Meeting and the issue becomes whether or not those documents constitute evidence before the Board. There is no dispute that they were filed with the Board and they were filed at the same time as the Application for Certification in order to give the Board jurisdiction to enter upon the inquiry. However, given that AMU [Atlantic Meatpackers Union] did not call any evidence at the hearing, the issue remains whether or not those documents constitute evidence within the meaning of the **Labour Act** and the Regulations made pursuant thereto.*

*In Ontario Labour Relations Board Law and Practice by Sack & Mitchell (1985), (Butterworths; Toronto, Ontario) at page 27 was stated that the **Ontario Evidence Act** applied to the Board and the Ontario Labour Relations Board will not usually admit written statements, affidavits or hearsay. Later, at page 124, the following was stated in relation to trade union status:*

If an employee organization has not already established its status before the Board, it must prove that it is a trade union within the meaning of the Act. The Registrar will generally advise the parties in the notice of hearing to this effect: Rule 78. The onus is on the applicant to prove its status by way of credible oral (viva voce) testimony regarding the circumstances surrounding the formation of the union; the mere submission of a collective agreement or a constitution, or even a certificate from another board will not suffice. If the certification application is to be successful, status as a trade union must be completely by the date of

the application. Furthermore, proof of status must be presented on the date of the hearing, and cannot be cured by actions subsequent thereto... [Emphasis added]

While a later version of Sack & Mitchell (2000) commenting on the 1995 Ontario Labour Act notes that questions of trade union status will be addressed only after a representation vote has been held, there is nothing therein to suggest that the Applicant does not have to prove that it is a trade union within the meaning of the applicable legislation.

This practice of requiring oral testimony is consistent with cases emanating from the Ontario Labour Relations board. In Ontario Haulers Union v. Repac Construction & Materials Ltd., [1977] O.L.R.B. Rep. Sept. 582, the Board stated at paragraph 9 the following:

As indicated at the outset, the onus rests upon the applicant to prove its status if such status has not previously been established before the Board. In order to establish its status as a trade union, an application must satisfy the Board that it is a viable entity for collective bargaining purposes, and, in this regard, the Board requires that vive voce evidence be given of the circumstances surrounding the formation of the union...[Emphasis added]

In Brant County Board of Education v. Female Office Employees' Assn., [1979] O.L.R.B. Rep. Feb. 70, the Ontario Labour Relations Board stated that "The existence of a constitution which has been adopted by the members of the organization seeking trade union status is vital to it being able to convince the Board that the organization satisfies the requirements of Section 1(1)(n)."

Where an organization seeking trade union status is a homegrown or homemade association, it must satisfy the tribunal that is bona fide and viable as an organization in accordance with the relevant tests that have been developed over the years in the jurisprudence. See: International Paper Industries Ltd. and Paper Recyclers Employee Association and Canadian Union of Public Employees (1989), No. C235-89 (B.C. Ind. Rel. Council). In International Paper Industries Ltd., the British Columbia Industrial Relations Council stated at pages 3-4 of the Decision:

When an organization is granted trade union status and certified under the Act, it is given a great deal of power and it undertakes very heavy responsibilities. For that reason, the Council will exercise its discretion to grant trade union status very carefully. If there is any doubt, the Council will err on the side of not granting the application. The organization can always re-apply for certification after it rectifies the errors, omissions or flaws which led the Council to dismiss the application in the first place. On the other hand, once certified, the employees and the employer will have considerable difficulty in extricating themselves from the collective bargaining relationship which follows upon certification. It is therefore, in the interest of all concerned that the Council refuse to qualify an organization as a trade union unless it is completely satisfied that the tests have been met.

What the Board is faced with in the present case in relation to trade union status is a Constitution and Minutes of a Founding Meeting both of which were attached to the Application for Certification, but neither of which were referred to in the main body of the document. In order to determine whether or not either of those documents should be relied upon by the Board, the Board find the comments of the Alberta Labour Relations Board relevant in the case of United Steelworkers of America Local 5013 v. Vicwest Steel Inc. and Westeel, a Division of Jannack Limited and Marlin Westeel Ltd., [1987] Alta. L.R.B.R. 572 where the Board stated at pages 3-4:

Where the law of evidence applies, a party having knowledge of a document may introduce it in a number of ways. If it is a public or quasi-public document, various provisions of the Evidence Act may be utilized which may allow virtually automatic admissibility. Records of the Companies Branch are a good example. Of course, the simplest way

to introduce a document in judicial proceedings is to call a signatory and have the person identify the documents. The party may also be able to call someone else to identify the document such as someone with custody of the document who knows of its authenticity. It could also be some third party who might even be on the opposite side. An official of a trade union may be called to testify as to the authenticity of a contract between the employer and a union. Identification of a document by these means, along with the fact that it was in the possession of the other side, may be sufficient for the Board to accept the document and rely upon its contents.

The Board is not bound by the rules of evidence, but in our view, in order to accept a document, the Board must have before it information, normally given by way of oral testimony, that is sufficient to convince the Board that the document in question can be relied upon for our purposes. If signatories to a particular document are not available, the Board may be satisfied with the evidence of some other person who can testify that, to their knowledge, the document is in the possession of the company and can be relied upon. Of course the other side would have the opportunity of cross-examining this witness and leading other evidence if they desired. The application must decide on what form of supporting evidence it will introduce. The document is not evidence simply because it has been produced under s. 13(1)(b). [Emphasis added]

The Board also find the comments of the Ontario Labour Relations Board in Canadian Maritime Union (CLC) v. Underwater Gas Developers Ltd. [1967] O.L.R.B. Rep. 555 instructive when the Board stated at paragraphs 5 and 6, the following:

1. ...It should further be noted that in order for weight to be given to any documents presented to the Board as evidence, an applicant should be prepared to properly identify and prove such documents at the hearing.
2. The Board usually requires and obtains oral testimony of officials of the applicant or some other person who has personal knowledge of the facts concerning the formation of the applicant including, inter alia, evidence of the applicant's constitution, the objectives, and purposes of the organization, the election of officers, evidence of qualifications necessary for membership in the organization and any other matters that may be relevant to be the applicant within the meaning of Section 1(1)(f) of the Labour Relations Act. That is not, however, to suggest that oral evidence is the only method of proving status in every case before this Board. The "best evidence rule" should generally prevail. Each case, however, must stand on its own merits and the onus is upon the applicant to provide the Board with sufficient, acceptable evidence on which it can properly make a finding. [Emphasis added].

After reviewing the law and the documents contained in the Board file, the only document that is a sworn document before the Board is the Application for Certification itself, being Form 1 and consisting of two pages. While the Board recognized that the Constitution and the Minutes of the Founding Meeting were attached to the Statutory Declaration, there is no reference to either of those documents in the Statutory Declaration and the deponents to the Statutory Declaration have not attested to the veracity and truthfulness of the documents attached thereto. Clearly, the law would appear to be that oral testimony is required for the most part, or certainly evidence on which the Board can rely and make a finding. There is no such evidence before the Board with the meaning of the legislation and no person was called to give oral testimony before the Board. There is no Affidavit before the Board, no sworn testimony provided by AMU, and the only Statutory Declaration that was filed is the one previously referred to, which did not incorporate any exhibits.

The Board is left with no alternative but to state that there is no evidence upon which the Board could conclude that AMU has made out the essential elements to prove trade union status. Accordingly, the motion made by UFCW, Local 864, to dismiss the Application is granted and the Board orders that the Application for Certification be dismissed.

The Board wishes to state that the early dismissal could have been avoided had AMU, an organization which has never been certified before in this province, called evidence before the

Board to prove its trade union status. For whatever reason, AMU chose not to call evidence and closed its case relying on the documentation filed with the Board. As previously discussed, this documentation does not constitute evidence before the Board in the context in which it was provided. Again, it is not the Board's responsibility to advise counsel on how to present their case. As AMU did not provide the Board with any evidence, the Board was left with no other option but dismiss AMU's application.

31. Counsel for UFCW argued in this Motion for Early Dismissal, as it had previously argued last year in *Atlantic Meatpackers Union No. 1* that in order for the Application for Certification to be successful, AMU had to produce evidence to the Board that it was a trade union, that the unit was appropriate for collective bargaining and the AMU had a majority of support.
32. The appropriate test to be utilized by the Board in determining whether to grant the motion for early dismissal of the Application for Certification is whether there is some evidence upon which the Board can conclude that AMU has made out the essential elements of its case, as noted above.
33. The Board would have thought, given its earlier Decision of February 13, 2002 in *Atlantic Meatpackers Union No. 1* that AMU would have clearly understood what was required of it in order to prove its trade union status. Specifically, a review of the authorities cited in that Decision, clearly demonstrates that if an employee organization such as AMU has not already established its status before the Board, AMU must prove it is a trade union within the meaning of the *Labour Act*. This is usually done by oral testimony regarding the circumstances surrounding the formation of the union which would include providing the Minutes of the Founding Meeting, proving that the union is a viable entity for collective bargaining purposes, proving that the union has a Constitution which has been adopted by the members of the organization having officials prove the circumstances concerning the formation of the union, demonstrating the objectives and purposes of the union, proving the election of officers and providing evidence of qualifications necessary for membership in the union. Despite the clear authority that was outlined in *Atlantic Meatpackers Union No. 1* by this Board, this Board is now faced again, one year later, with an Application for Certification filed by AMU wherein the evidence is lacking to support the essential elements of the case.

a) Trade Union Status

34. The definition of trade union contained in Section 1(1)(m) of the *Labour Act*, R.S.P.E.I. 1988, Cap. L-1, states that *trade union* means:

Any organization of employees formed for purposes that include the regulation of relations and collective bargaining between employees and employers and includes a council of trade unions that has been vested with appropriate authority by any of its constitute unions to enable it to discharge the responsibilities of a bargaining agent;

35. In terms of whether or not AMU has demonstrated it is a trade union, the Board find the comments of *Opera Ghost Productions Inc., [1990] O.L.R.B. Rep. March 325 (OLRB)* instructive. There the Ontario Labour Relations Board found that while the evidence did establish that the draft local constitution was presented and voted on at meetings of the applicant, there was no evidence in the manner in which these meetings were called, when and where they were held or how the votes in question were conducted. Accordingly, the Board was not satisfied that the Applicant was a trade union within the meaning of the Act and the application was dismissed.
36. The case *TNG Canada/CWA v. The North Bay Nugget, [2002] O.L.R.D. No. 1363 (OLRB)* is relevant to the issues before this Board. There, as in the case before this Board, the Ontario Labour Relations Board had not found the applicant to be a trade union in any other previous Decision. Accordingly, the union had to prove its trade union status. The Ontario Labour Relations Board indicated that in order for it to determine that a party is a trade union, the Board has to make three findings, namely:

1. that an organization exists;
2. that it is an organization of employees; and

3. that its purposes include the regulations between employees and employers.
37. In fact it has been held that the essence of what is required to constitute an organization is to form a contractual commitment by the members to unite with one another to promote certain objectives. Historically, a five step test was applied in determining whether the individuals involved had entered into a contractual relationship with one another on the basis of the terms set forth in the Constitution. That five step process was set out in ***TNG Canada/ICWA Local 199 U.A.W. Building Corporation, [1972] O.L.R.B. Rep. July 472*** at paragraph 10.
- (1) *A constitution should be drafted setting out, among other things, the purpose of the organization (which must include the regulation of labour relations) and the procedure for electing officers and calling meetings;*
- (2) *The constitution should be placed before a meeting of employees for approval;*
- (3) *The employees attending such meeting should be admitted to membership;*
- (4) *The constitution should be adopted or ratified by the vote of said members;*
- (5) *Officers should be elected pursuant to the constitution.”*
38. The Board in the past has not been overly concerned with the sequence of steps employees take in forming a trade union. See: ***Canadian Paperworkers Union Local 167 and Schurman Industries (a division of Schurman Enterprises Ltd.) and United Brotherhood of Carpenters and Joiners of America, Local 1338, (Under Supervision) 89-021A, 89-021B, May 16, 1991 (PEILRB)***. However, the Board has held the five steps noted above had to be fulfilled and the Board had to be satisfied that such had occurred in order for an applicant to be established to be a properly constituted trade union.
39. In ***Canadian Labour Congress v. University of Toronto, The Governing Council, [1999] OLRB Rep. July/August 742 (OLRB)*** the Canadian Labour Congress (CLC) wished to hold the bargaining rights for a short period of time until they could be transferred to Local 2001 after a charter was granted. For this and other reasons, the Board could not find that CLC was an organization of employees formed for the purpose that included the regulation of relations between employer and employees and therefore, found it was not a trade union within the meaning of the *Act*.
40. In ***Atlantic Meatpackers Union No. 1***, the Board referred to the case of **International Paper Industries Ltd. and Paper Recyclers Employee Association and Canadian Union of Public Employees** (1989), No. C235-89 (B.C. Ind. Rel. Council), and quoted the following from pages 3-4 of that Decision.
- When an organization is granted trade union status and certified under the Act, it is given a great deal of power and it undertakes very heavy responsibilities. For that reason, the Council will exercise its discretion to grant trade union status very carefully. If there is any doubt, the Council will err on the side of not granting the application. The organization can always re-apply for certification after it rectifies the errors, omissions or flaws which led the Council to dismiss the application in the first place. On the other hand, once certified, the employees and the employer will have considerable difficulty in extricating themselves from the collective bargaining relationship which follows upon certification. It is therefore, in the interest of all concerned that the Council refuse to qualify an organization as a trade union unless it is completely satisfied that the tests have been met.*
41. A similar conclusion was reached in ***Harbour Electric Ltd. v. I.B.E.W., Local 213 & 230, 1999 CarswellBC 3020 (BCLRB)***. There, the Board noted that only five of the employees had the opportunity by the time of the Application for Certification to agree formally to the approval and adoption of the Constitution and By-laws. They were a very small portion of the overall membership. The structure was never formally ratified after the founding meeting by a vote of the larger membership, nor was ratification shown through other means, such as the adoption of a Constitution and By-Laws through the membership application process. The Board indicated that what may be acceptable in some circumstances may call for scrutiny in other cases because of the surrounding events. The Board again noted that granting union status is a significant decision and once the parties

have that status, it is given a great deal of power and responsibility. Applying the stricter test for a homemade association and being mindful of the admonition to err on the side of caution, the Board found that the association had not discharged the burden to prove it was a trade union.

42. Turning to whether or not AMU is a trade union, a review of the five steps enumerated by the Ontario Labour Relations Board is necessary. The first step is that a Constitution should be drafted setting out certain things, one of which must include the regulation of labour relations and the procedure for electing officers and calling meetings. When the Board reviews Exhibit A-4, the Constitution of the AMU, the objects of the union are spelled out, one of which is stated to be: *"to represent members of the Union in matters of employer and employee relations, including, but not limited to, the negotiation of terms and conditions of employment and work through collective bargaining."* There is also a procedure for electing officers and calling meetings. Thus it would appear the first step is satisfied.
43. Turning to the remaining four steps, namely whether or not the Constitution was placed before a meeting of employees for approval, whether the employees attending such a meeting were admitted to membership, whether or not the Constitution was adopted or ratified and whether or not the officers were elected pursuant to the Constitution, the Board has reviewed the documentary evidence as well as the oral evidence that was given by Paul Saunders and Mark Chiasson. In this regard, and as noted earlier, Mr. Saunders advised that the employees of Larsen Packers signed cards, paid the two dollar initiation fee, became members of AMU and now pay their dues regularly. While Mr. Saunders testified about the amendment to the Constitution and how it was enacted, there was absolutely no evidence placed before the Board in relation to whether or not the Constitution was placed before a meeting of employees for approval, whether or not those employees were admitted to membership, whether or not the Constitution was adopted or ratified by a vote of the members and whether or not officers were elected pursuant to the Constitution. The Board does note that while Mr. Saunders referred to the *"second Founding Meeting"*, he did not refer to the Founding Meeting, nor were the Minutes of the Founding Meeting placed in evidence before this Board or even referenced before this Board. In the present case, there is no indication of what took place at the first meeting
44. Furthermore, there was no evidence presented to this Board of the manner in which these meetings were called, when and where they were held or how the votes in question were conducted. Had Mr. Saunders been asked the question, this Board believes he may have been able to answer the question and thus prove trade union status. However, he was not asked that question and in fact when he started to discuss this issue in his evidence, his Counsel stated the following:

Question: Okay. What I want to get at here is, rather than go through that whole process, because I think we know now that you decertified from UFCW and certified with the AMU.

45. In fact, there was no evidence as to who might have been at the initial meetings, how many might have been at the initial meeting or other necessary information referred to previously. In the case of *IMP Manufacturing Employees Association*, [1979] 3 Can.L.R.B.R. 264, the Nova Scotia Labour Relations Board stated that it would not allow technical requirements to become a snare for employees. On the other hand, the Board had to be satisfied that a group of people met and mutually manifested their intention to adopt an appropriate Constitution for the union in which they became members and for which they elected officers.
46. In the present case, the Board recognizes that the *Interpretation Act*, R.S.P.E.I. 1988, Cap. I-8 contains a provision indicating that enactments are to be construed as remedial and given large and liberal construction and interpretation as best insures the attainment of their objects. That being so, there was no evidence placed before the Board to indicate that initially, Mr. Saunders and a group of members from the Larsen Packers plant formed together, mutually manifested their intention to adopt the Constitution before this Board, that they became members in AMU and were

elected officers in accordance with the Constitution. The evidence is completely lacking in this regard.

47. Before leaving this issue of trade union status, the Board must comment on the membership evidence that was filed before the Board. Regulation 3 of the *Labour Act Regulations* states as follows:

(1) *An application by a trade union for certification as bargaining agent pursuant to the Act shall be made in Form 1.*

(2) *Concurrently with the filing of an Application for Certification, the Applicant trade union shall file with the Board the material upon which it relies to establish its right to certification and such material shall include:*

- a) *a list of persons in the proposed bargaining unit who wish that the applicant trade union be certified as bargaining agent on their behalf;*
- b) *evidence that the persons in the lists referred to in clause (a) wish that the applicant trade union be certified as bargaining agent on their behalf;*
- c) *a copy of its constitution rules and by-laws or other instruments or documents containing a full and complete statement of its objects and purposes; and*
- d) *a list of its officers*

(3) *The material filed by the applicant trade union under clauses 2(a) and (b) shall be for the information of the Board only and shall not be available to or open for inspection by any other party to the proceedings.*

(4) *A person shall be deemed by the Board to wish that the applicant trade union be certified as bargaining agent on his behalf if at the date of application*

- (a) *he was a member in good standing of the applicant trade union, and, had paid at least two dollars as union dues within three months preceding the date on which the application was filed; or*
- (b) *he has signed a document stating that he wishes the applicant trade union to be certified as bargaining agent on his behalf and has within three months preceding the date on which the application was filed paid at least two dollars as union dues or fees.*

48. The Board notes that the membership application form filed with the Board by AMU stated as follows:

*Atlantic Meatpackers Union (AMU)
Membership Application Form*

I, _____, hereby make application for membership in the Atlantic Meatpackers Union and in so doing I promise to abide by the Constitution and By-Laws of the union.

I hereby certify, by my signature, that I have paid the membership initiation fee of Two Dollars for the purpose of joining the Atlantic Meatpackers Union.

Date: _____ Applicant's Signature:

I, _____, hereby witness this application and acknowledge receipt of Two Dollars as payment of initiation fees for membership in the Atlantic Meatpackers Union.

Date: _____ on behalf of AMU _____

49. When one reviews Regulation 3(4)(a) noted above, if the person who signed the card is a member in good standing of the Applicant trade union, in this case AMU, and has paid at least two dollars as union dues within three months preceding the date of Application for Certification was filed, the Board deems the person to wish AMU to be certified as bargaining agent on his behalf. When one reviews the Application for Membership noted above, it does not indicate that person who signed the card was a member in good standing of AMU.

50. The provision in the Constitution that deals with membership is Article 3 which states as follows:

Article 3 – Membership

3.1 *Membership in the Union shall be open to all persons accepted for membership in accordance with the provisions of this Constitution.*

3.2 *The Union may accept as members any person or group of persons deemed appropriate for membership, who has signed a membership card and paid the prescribed initiation fee, if any, and who agrees to abide by the provisions of this Constitution.*

3.3 *A member in good standing is a member who is not more than three months in arrears of dues unless an exemption has been granted and who is not suspended or expelled from the Union.*

3.4 *The membership may discipline a member who has acted contrary to the best interests of the membership through a reprimand, a suspension from membership, expulsion from the Union, or any combination thereof.*

51. **Article 3.2 of the Constitution clearly indicates the union may accept members who have signed membership cards and paid the prescribed fees. In this case, there is no evidence before the Board that any of the members who signed the membership applications were admitted by the Union as members.** In fact, Mr. Saunders, when he refers to the Berwick members, refers to them as “*our present members*”, which would clearly imply that the Garden Province employees have not been accepted as members of AMU as of the date of the application before the Board. As such, this provision is inapplicable to the situation at hand.

52. Additionally, although not necessary to this Decision, it would appear that the members of AMU who are located in Berwick, Nova Scotia were concerned about the Garden Province situation. To use the words of Mr. Saunders, the amendment that he stated was made to the Constitution (although no evidence was placed before the Board as to the adoption of the Constitution in the first place) was to give “*some confidence to our present members*” of how the governance or business would be conducted. This lends support to the conclusion of the Board that the employees of Garden Province have not been accepted as members as of yet.

53. Turning to Regulation 3(4)(b), while there is evidence before the Board that the individuals paid at least two dollars as a fee (an initiation fee), there is no evidence that the employees who signed the application forms wished AMU to be certified as bargaining agent on their behalf as required by Regulation 3(4)(b). In the *Canadian Paperworkers Union* case, *supra*, the Board reproduced a portion of the membership application that the employees in question signed which stated in part as follows:

...

I, the undersigned, freely and voluntarily apply for membership in the Canadian Paperworkers Union, Local 167.


I agree by such membership to observe all constitutional rules and other laws of the Canadian Paperworkers Union, Local 167, and to promote its principles and interests.

I authorize the representatives of the Canadian Paperworkers Union to act in my name as exclusive agents on all matters regarding bargaining certification and collective negotiations.

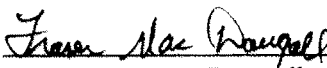
...

54. The Board can take notice of the fact that in other situations where membership evidence has been filed with the Board, there is usually a statement indicating that the person who is signing the membership card wishes the applicant trade union to be certified as bargaining agent on his behalf or words to that effect. These words, which are very important, are not present on the membership application that was filed by AMU with the Board.
55. In light of the foregoing, the Board finds that the membership evidence filed with the Board is deficient and does not comply with Regulation 3(4) of the *Labour Act Regulations* for the Board to be able to deem the employees to wish AMU to be certified as bargaining agent. In light thereof, the only evidence before the Board in relation to membership evidence is the oral evidence of Mark Chiasson wherein he indicated he wished AMU to be certified on his behalf. No other employee of Garden Province was called to give evidence.
56. **To summarize, the Minutes of the Founding Meeting were not provided to the Board, no evidence was given to the Board regarding the Founding Meeting, there was no indication that the Constitution was placed before a meeting of employees for approval, there was no indication that those employees of Larsen Packers were ever admitted to membership, there was no indication the Constitution was approved or ratified by a vote of the membership, and there is no indication that the officers were elected pursuant to the terms of the Constitution. There was no evidence about the manner in which the initial meetings of AMU were called, if any, when and where they were held or how the votes in question were conducted, if they were even conducted.** Additionally, there is no indication that the employees of Garden Province are members of AMU and the membership cards do not indicate same. Additionally, the cards do not indicate that the employees of Garden Province wish AMU to be certified as bargaining agent on their behalf. In light of the foregoing, the Board has no alternative but to hold that there was no evidence produced which would satisfy the Board that AMU is a trade union within the meaning of the *Labour Act*.
57. What appears to have happened in this case is that AMU felt because it had a Certification Order from the Nova Scotia Labour Relations Board, that a document would be sufficient to prove its trade union status. However, as outlined in **Ontario Labour Relations Board Law and Practice**, the mere submission of a certificate from another Board will not suffice.
58. An additional reason for denying the Application for Certification that is currently before the Board is the fact that the Board is not satisfied that AMU will be the union that will be doing the collective bargaining on behalf of the employees of Garden Province. The Board has been advised by Mr. Saunders that AMU Nova Scotia will elect their own executive officers and committees for their own governance and PEI would establish their own council and take care of their own governance which Mr. Saunders felt was an administrative matter.
59. The Board wishes to note that at the present time there are two unions bearing the name Atlantic Meatpackers Union that are in existence and have filed Applications for Certification with the Board in this province. One is the union that is currently before the Board in this Application for Certification and Paul Saunders is its President. The other Atlantic Meatpackers Union is the union that was previously before the Board and for which the Board rendered a decision in *Atlantic Meatpackers Union No. 1* on February 13, 2002 where Paul Whiteway is named as its President. At the same time, the Board has been advised orally by both Mr. Saunders and Mr. Chiasson that this trade union the Board will be certifying will not be the trade union that will be holding the collective bargaining powers, will not be the trade union that will be governing the relationship with Garden Province and will not be the Executive that will be governing the relationship of the employees with Garden Province. The suggestion that is just an administrative function and the governance will be transferred to another group cannot be accepted by the Board. If for no other reason, the Application for Certification must fail on this basis as the law is quite clear that employees must know what organization they are joining and who will be representing them in collective bargaining.
60. As is evident from the cases of *Harbour Electric Ltd.* and *International Paper Industries Ltd.*, if the Board feels that the organization has not proved trade union status, the Board will err on the side of not granting the Application for Certification due to the fact that once certified, the employees and the employer will have considerable difficulty in extricating themselves from the collective bargaining relationship which follows upon certification.

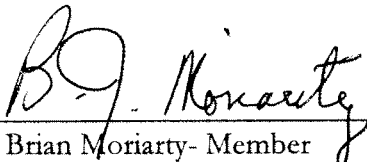
61. While there were various other matters that were raised by Counsel for UFCW, such as the fact that AMU did not claim majority support in the Application for Certification, the fact that the Application for Certification and exhibits were not jointly and severally declared and the fact that the Application for Certification did not refer to the exhibits in the body of the Application, the Board finds these arguments to be without merit. Furthermore, the fact that the employer was incorrectly named as Garden Province Meats Limited as opposed to Garden Province Meats Inc. is a technical irregularity which can be and has been corrected by the Board.
62. **On a final note, this Board has stated time and time again that if parties apply to the Board, they are expected to know the law. It is not for the Board to tell the parties how to present their cases.** This Board has rendered at least two decisions involving trade union status and what is necessary to demonstrate same, one of which involves the same unit of employees, namely those employees of Garden Province Meats Inc. which Decision is referred to as *Atlantic Meatpackers Union No. 1*. Despite the foregoing, this Application for Certification involving this same unit of employees was presented to the Board a second time without the necessary requirements being fulfilled.
63. **The Board is cognizant of the fact that the employees of Garden Province appear unhappy with the representation they currently have in UFCW. While the Board sympathizes with the employees in their plight, the Board cannot grant an Application for Certification where the Board is not satisfied that the trade union appearing before it, in this case AMU, is in fact a trade union within the meaning of the legislation.** Furthermore, the membership evidence submitted by AMU fails to meet the basic requirements which are specified in the legislation.
64. The Board is left with no alternative but to find there is no evidence upon which the Board could conclude that AMU has made out the essential elements to prove trade union status. The Motion for Early Dismissal made by UFCW to dismiss the Application for Certification is granted.
65. As the Board stated in the Decision *Atlantic Meatpackers Union No. 1*, since AMU has never been certified before in this Province, it is necessary for it to call evidence to prove its trade union status. That evidence must include the various information referred to previously in this Decision. As the evidence was not placed before the Board, the Board must dismiss the Application for Certification.
66. As the Application for Certification has been dismissed, the final matter which must be addressed is whether or not the Board should impose a time bar. Section 13(7) of the *Labour Act* reads as follows:
- If the Board is not satisfied that the applicant trade union is entitled to be certified under this section, it shall dismiss the application and may designate the length of time that must elapse before the same applicant may make a new application.*
- Considering the circumstances of this case, the Board is not prepared to exercise its discretionary power to invoke a time bar.
67. The Board rules accordingly.



ALFRED FRASER
 Vice-Chairman

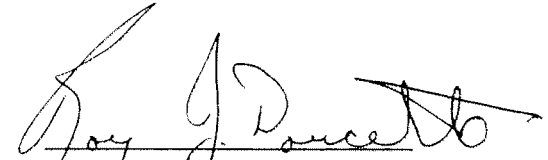


 Fraser MacDougall – Member



 Brian Moriarty- Member

This decision was made on the 25th day of April, 2003, and issued under the hand of the Chief Executive Officer on May 13, 2003.



ROY J. DOUCETTE
Chief Executive Officer