IN THE MATTER OF AN UNFAIR LABOUR PRACTICE COMPLAINT

BETWEEN:

EAST ISLE SHIPYARD, a division of IRVING SHIPBUILDING INC.

APPLICANT

AND:

INTERNATIONAL ASSOCIATION OF MACHINISTS and AEROSPACE WORKERS, KINGS LODGE NO. 1934 AND THE EMPLOYEES OF EAST ISLE SHIPYARD LIMITED

RESPONDENT

COUNSELS FOR THE COMPLAINANT: Murray L. Murphy/ Stephen J. Carpenter

REPRESENTATIVES FOR THE RESPONDENT: Self-Represented/ Brian W. Beaton

DECISION

Background

The Applicant in this matter, East Isle Shipyard, a division of Irving Shipbuilding Inc. ("East Isle"), operates a shipbuilding operation in Georgetown. East Isle employs numerous employees at the Georgetown Shipyard. The employees of East Isle are represented by the International Association of Machinists and Aerospace Workers, Kings Lodge No. 1934 (the "Union"). The relations between East Isle and the Union are regulated by a Collective Agreement dated November 1, 2006 to October 31, 2009 (the "Collective Agreement"). East Isle and the Union are currently in negotiations over a new collective agreement.

On April 23, 2010, Murray L. Murphy ("Counsel for the Applicant") contacted the Chief Executive Officer of the Board (CEO) to advise that an Unfair Labour Practice Complaint was being prepared by East Isle. The CEO received the Complaint in Form 11 at 5:42 pm on Friday April 23, 2010 ("the Complaint").

The Complaint alleged that the employees of East Isle (the "employees") had violated subsections 10(2)(d), 22 and 41 of the *Labour Act*, R.S.P.E.I. 1988, Cap. L-1 ("*Labour Act*") and Article 25 of the Collective Agreement. The Applicant alleged that approximately 67 of the 90 employees of East Isle had engaged in an illegal work stoppage by signing out of the workplace at the lunch break on Friday April 23, 2010.

Section 11(1) of the *Labour Act* provides that the CEO must inquire into the matter and endeavour to effect a settlement. After spending Saturday April 24, 2010 and Sunday April 25, 2010 making inquiries and conducting interviews into the matter, the CEO advised Counsel for the Applicant of the outcome of the inquiries.

The CEO was advised late on Monday, April 26, 2010, by Counsel for the Applicant that the responses from the Respondent had not resolved the issue and the Applicant wished to pursue the Complaint. Counsel for the Applicant indicated that he would file further particulars with the Board, which material was received by the Board on Thursday April 29, 2010.

Upon receipt of the additional information from Counsel for the Applicant, the CEO immediately advised the representatives of the Respondent of the need for the Respondent to file a Reply to the Complaint. Pursuant to the *Labour Act* and the *Labour Act* Regulations, the Board abridged the time for the filing of the Reply. The Respondent agreed and delivered the Reply to the CEO at approximately 3:30 p.m. that same day.

Utilizing its discretion, the Board set the matter down for an expedited hearing and caused to be issued a Notice of Hearing to commence the matter on April 30, 2010 at 10:00 am. The Notice of Hearing was served on each party to the complaint by the CEO on Thursday April 29, 2010.

The hearing commenced on April 30, 2010 and the Applicant was represented by Counsel, Mr. Murray L. Murphy and Mr. Stephen J. Carpenter. Also present for the Applicant were Mr. Michael Roberts, VP of Corporate Development for Irving Shipbuilding Inc.; Mr. Stephen Coleman, the General Manager of the Georgetown Shipyard location, and Mr. Michael Briggs, the Production Manager for Georgetown Shipyard.

At the hearing, present representing the Respondent Union were Mr. Frank Sweeney, President of Local 1934, Mr. Stephen Martell, Vice-President of Local 1934, Mr. Darren Dockendorff, the Secretary-Treasurer of the Local 1934 and Mr. John MacEachern, the recording Secretary of Local 1934.

Mr. Brian W. Beaton, Grand Lodge Representative of the Union, attended the second day of the hearing, which took place on Monday, May 3, 2010.

The Board wishes to note that it takes matters of illegal strikes very seriously and that it deals with such allegations with urgency. As such, the Board felt that it was appropriate to abridge its timelines in calling the hearing.

Statutes Considered

1. Labour Act, R.S.P.E.I. 1988 Cap. L-1, sections 10(2), 22 and 41.
2. Labour Act Regulations, EC 521/71

Cases Considered

1. *Aubin Plumbing & Heating v. Rousseau*, 1967 CarswellOnt 570 (OLRB)
2. *Men's Clothing Manufacturers v. O'Connor*, 1966 CarswellOnt 439 (OLRB)
3. *McDonnell v. Douglas Canada v. U.A.W., Local 1967*, 1985 CarswellOnt 1359 (OLRB)
4. *B.C.L. Canada Inc. v. A.C.T.W.U., Local 1332*, 1981 CarswellOnt 949 (OLRB)
5. *Syndicat des employes de production du Quebec & De L'Acadie v. Canada (Labour Relations Board)*, 1984 CarswellNat 175 (SCC)
6. *Cambridge (City) b. A.T.U., Local 1608*, 1989 CarswellOnt 1208 (OLRB)
7. *C&C Yachts Manufacturing Ltd. v. Carpenters, Local 2737*, 1977 CarswellOnt 899 (OLRB)
8. *Mechanical Contractors Association of Ontario v. C.J.A.*, 1988 CarswellOnt 1225 (OLRB)
9. Pilkington Brothers (Canada) Ltd. v. Persons named in Schedule "A" of this Application, 1976 CarswellOnt 738 (OLRB)
10. *Saint John's Shipping Association and Daniel Kennedy, President Longshoreman's Protection Union Local 1953*, (1985) CLRB Decision No. 514 (CLRB)
11. SGS Supervision Services Inc., (1992) CLRB Decision No. 914 (CLRB)

Evidence

- *Documentary Evidence*

The documents which comprised the Board file at the time of the hearing were as follows:

1. E-mail correspondence from Murray Murphy to Shawn Shea, enclosing the Unfair Labour Practice Complaint, in Form 11, dated April 23, 2010, received by the Board at 5:42 pm together with Exhibits, namely:

Exhibit #1 - the Collective Agreement
Exhibit #2 - employee overtime sheets
Exhibit #3 - Application for conciliation dated April 23, 2010
Exhibit #4 - Interoffice memo from Brian Beaton;

2. Letter from Shawn Shea to Brian W. Beaton dated April 23, 2010, which served notice of receipt of the Unfair Labour Practice Complaint filed by the Applicant, and requested that the Respondent submit a Reply;

3. E-mail correspondence from Shawn Shea to Brian W. Beaton, dated April 23, 2010, sent at 7:39 p.m., enclosing the Unfair Labour Practice Complaint (Form 11) filed by the Applicant, together with Exhibits 1-4, and letter from Shawn Shea to Brian W. Beaton requesting that the Respondent submit a Reply;

4. Draft interim order provided to the Board by Murray Murphy on April 23, 2010 (attached to Murray Murphy's e-mail of April 23, 2010);

5. Letter from Murray Murphy to Shawn Shea, dated April 27, 2010, received by the Board on April 29, 2010 at 9:48 am, referencing an attachment, (no attachment was received by the Board);

6. Letter from Murray Murphy to Shawn Shea dated April 29, 2010 received April 29, 2010 at 9:48am;

7. Revised draft order provided to the Board by Murray Murphy on April 29, 2010;

8. Letter from Shawn Shea to Murray Murphy dated April 29, 2010 received April 29, 2010, which acknowledged receipt of the two previous letters, as well as receipt of a revised draft order;

9. Reply to Unfair Labour Practice Complaint by International Association of Machinists and Aerospace Workers, Lodge (1934), dated April 29, 2010 and received by the Board on April 29, 2010;

10. Letter from Shawn Shea to Brian Beaton dated April 29, 2010 acknowledging receipt of the Reply and advising of the time of the hearing;

11. Notice of Hearing dated April 29, 2010 with covering letter from Shawn Shea to Brian Beaton, with attached fax cover sheet;

12. Letter from Shawn Shea to Murray Murphy dated April 29, 2010 enclosing the Reply from the Respondent;

13. Letter from Shawn Shea to Murray Murphy enclosing the Notice of Hearing dated April 29, 2010, with attached fax cover sheet; and

14. Letter from Shawn Shea to Brian Beaton dated April 29, 2010 enclosing copies of all correspondence received from Murray Murphy.

In addition to the documents in the Board file, the Applicant tendered a bound volume of Exhibits (marked Exhibit C-1) at the hearing, which included the following documents:

1. Reply filed by the Respondent, dated April 29, 2010;

2. Collective Agreement dated November 1, 2006 to October 31, 2009;

3. Correspondence from the Respondent dated April 22, 2010, providing an update on negotiations;

4. Application for conciliation dated April 22, 2010;

5. Lateness/Absenteeism sheet for April 23, 2010;

6. Lateness/Absenteeism Sheets for April 16, 2010, April 9, 2010, March 26, 2010, March 19, 2010 and March 12, 2010;

7. Correspondence from Brian W. Beaton to Members, dated April 23, 2010;

8. Weather Reports from Environment Canada on April 23, 2010; and

9. Overtime sheets.

Oral Evidence

Mr. Stephen Coleman was the first witness for the Applicant. Mr. Coleman is the General Manager of East Isle. Mr. Coleman testified that on Friday April 23, 2010, he was out of the office at his home, when he received a call from his Production Manager, Michael Briggs around 12:20 p.m. Mr. Briggs advised that there was "*talk*" in the morning that the employees were going to carry out an illegal strike that afternoon. Mr. Briggs went to an outside appointment and when coming back he encountered many cars leaving the shipyard.

Mr. Coleman had further telephone discussions with Mr. Briggs at about 12:30 pm that same day. At that time, it was confirmed to Mr. Coleman that a large number of employees had signed out with the guard at the entrance when leaving for the lunch hour, indicating that they would not be returning in the afternoon.

After this discussion, Mr. Coleman spoke to Brian Beaton.

Mr. Coleman further testified that he was later provided with the log out sheets (which are entered as part of the Applicant's Exhibit Book). The log out sheets reflect that a large percentage of the employees left the shipyard at the noon whistle and logged out for the remainder of the day. Mr. Coleman further testified that the log out sheets are maintained by the

guard at the entrance to the yard, and that general practice requires that as each employee leaves, the employee is to provide a reason if he is not planning to be back after lunch. The log out sheets reflect that most of the employees who left are marked absent for "*PB*" which means "*personal business*".

Mr. Coleman testified that the shipyard works on a very tight schedule and that any delay is potentially very costly to the production schedule of the shipyard. At present, there is an ocean going tug boat ready for sea trials, and any delay in having the tug ready for sea trials results in huge financial penalties for East Isle.

Mr. Coleman testified that the parties had been in the midst of contract discussions; however, on the morning of April 23, 2010, the parties had filed a joint request to the Minister of Labour for conciliation as is permitted by the legislation. He also testified several employees had been laid off on March 23, 2010. It was his opinion that since the March 23, 2010 lay-offs, the members of the Union had been systematically refusing to work overtime. Prior to the lay offs and the contract negotiations, East Isle had no difficulty arranging for employees to work overtime. Mr. Coleman reviewed the overtime sheets and explained the process of asking employees to work overtime based on seniority and the purpose of keeping the sheets was to ensure fairness.

Mr. Coleman testified that on April 23, 2010, the log sheets reflect that most of the 67 employees were absent for "*personal business*" in the afternoon. Mr. Coleman also testified that while it is often the case that a few employees might be absent on a nice Friday afternoon, there has never in the history of the yard been that many employees absent, unless there had been a death in the community. Mr. Coleman did acknowledge that a few employees were absent for reasons other than personal business such as sickness or vacation.

Mr. Michael Briggs, the second witness for the Applicant testified that he was returning (from an appointment in Montague) to the yard at lunch time on Friday April 23, 2010, when he met a large number of cars heading away from the yard. When he reached the yard, he made inquiries and determined that most of the employees had signed out for "*personal business*".

Mr. Briggs also testified about the importance of meeting schedules and of having staff available to ready a ship for sea trials. He advised that he had been regularly asking employees to work overtime, and that he had consistently been unable to find any employees to work overtime. He testified that in his opinion, this was a direct result of the lay-offs of the employees in March 2010, as well as the fact that the parties were involved in contract negotiations. He also testified that he had been told by a couple of employees that they had been threatened by other union members that their safety was in jeopardy should they accept any requests to work overtime.

Mr. Briggs testified that this particular Friday afternoon was a normal April day weather wise. It was not a great day. The temperature was around 6-8°C at the lunch hour.

He testified that there were serious concerns with the number of employees absent on Friday April 23, 2010, as well as the fact that for the previous five weeks, employees were not agreeing to work overtime.

The Respondent called one witness, Mr. Steve Martell. Mr. Martell holds the position of Vice-President of the Local. Mr. Martell testified that Brian Beaton had faxed an Inter Office Memo to the shipyard after lunch on Friday, April 23, 2010. Mr. Martell testified that this notice was then copied and handed out to those employees present. He indicated that 20-25 notices had been handed out that day. The notice refers to the potential for a walk out, and advises the members of the illegality of doing so.

Mr. Martell denied any knowledge of an illegal work stoppage on the afternoon of April 23, 2010. He indicated that he was never approached by management to discuss a potential illegal work stoppage or to discuss the issue once the afternoon of April 23, 2010 arrived.

Mr. Martell further testified that he had personally spoken to some of the workers who were marked out for "*personal business*". The individuals Mr. Martell spoke to had advised that they had left the job site at lunch time due to illness. Mr. Martell testified that he had spoken to at least 6 people who indicated they had gone home sick. He questioned the accuracy of the log out sheet, indicating that many people were waived through without an opportunity to advise why they were leaving.

Mr. Martell did not believe that an illegal work stoppage had taken place on Friday, April 23, 2010. In his experience, no one would have stopped at the gate to sign out if this had been a strike. Also, there would have been a meeting of the members outside of the work place after the walk out, which never took place.

With respect to the issue of employees refusing to work overtime, Mr. Martell testified that the Union executive had not endorsed a concerted effort by the employees to refuse requests to work overtime. He testified that he had never advised any employees to refuse overtime requests. He also testified that to his knowledge, no employees had been threatened as to their personal safety should they agree to work overtime. Mr. Martell confirmed that the overtime issue had been raised at the union meeting in April, 2010. He indicated that one employee spoke up at the meeting saying, in essence, that if East Isle wanted employees to work overtime, then it should hire back the employees that had been laid off in March, 2010.

Issues

The issues to be determined are as follows:

1. Was there an illegal strike at the East Isle Shipyard on Friday April 23, 2010, contrary to the terms of the Collective Agreement as well as Section 10(2)(d) of the *Labour Act*;

2. Does the refusal of the employees to work voluntary overtime constitute an illegal strike, contrary to the terms of the Collective Agreement as well as Section 10(2)(d) of the *Labour Act*; and

3. If an illegal strike was found to have taken place, what is the appropriate remedy.

Decision

Relevant Contractual and Statutory Provisions

The following are the relevant sections from the Collective Agreement:

> *Article 6 - Overtime*
>
> *6.01 General*
>
> *It is recognized that overtime is voluntary on the employees' part. However, after an employee agrees to overtime work, it is an offence not to live up to that agreement and shall be treated as absenteeism.*
>
> *[...]*
>
> *Article 25 – Strikes & Lockouts*
>
> *25.01 There shall be no strikes, walk-outs or lockouts during the terms of this agreement, as set out in the P.E.I. Labour Act.*
>
> *The company reserves the right to discipline any employee who violates the provisions of this clause."*

The following are the relevant provisions of the *Labour Act*:

> *7.(1) In this Part*
>
> *(1) "strikes" includes*
>
> *includes a cessation of work or refusal to work or to continue to work by employees in combination or in concert or in accordance with a common understanding or a slow down or other concerted activity on the part of the employees designed to restrict or limit output or service.*
>
> *10.(2) No employee, trade union or person acting on behalf*

of a trade union shall

[...]

(d) call, authorize, counsel, procure, support, encourage or engage in a strike except as permitted by Section 41;

[...]

41. (2) no employee, trade union or person acting on behalf of a trade union shall call, authorize, counsel, procure, support, encourage or engage in a strike except as permitted by this section

[...]

Issue 1: Was there an illegal strike at the East Isle Shipyard on April 23, 2010?

The first issue to be determined is whether there was an illegal strike by the employees of East Isle on April 23, 2010.

In determining whether or not the actions of the employees can be considered an illegal strike, the Board has reviewed the evidence, the applicable legislation and the case law. The Respondent suggested that there was a practice at the yard that had developed over time that employees were free to leave work early on Friday afternoons and that on this particular Friday that is what took place. The Respondent suggested that there had been no organized effort to cause the employees to all leave at lunch, that this was nothing more than a coincidence of a number of employees leaving on a pleasant spring afternoon.

The Applicant argued that there were 67 employees who did not return to the yard on the afternoon of April 23, 2010. The evidence presented by the Respondent (albeit hearsay evidence) pointed out that some of the employees were marked out upon their departure for "*personal business*", when the Respondent stated they had left due to illness. Whether or not these 6 employees were in fact ill is not material to the determination of the overall effect of the absence of that many employees that day. It was also suggested by the Respondent that the guard at the gate was not keeping accurate records that afternoon and that several of the people absent had been marked out incorrectly. While it may be the case that the record keeping at the noon whistle on April 23, 2010 was not completely accurate, it is not contested by the Respondent that the majority of employees left at noon and did not return. It is difficult to accept that this was purely coincidence.

The totality of the evidence and in particular the absence of more than two thirds of the staff of East Isle on the day in question leads this Board to conclude that there was a concerted effort to have employees leave at noon.

In *Men's Clothing Manufactures Assn. of Ontario v. O'Connor*, 1966 CarswellOnt 439 (O.L.R.B.), the Board held that the work chart clearly indicated a pattern of alternate days of work and days of absence for a period of five days. As a result, the Board stated at page 2:

> *There is an unavoidable inference of concerted action in the course of conduct followed by the respondents and it is readily apparent that such a pattern of behavior, which did in fact limit the output of the applicant, constitutes a strike within [the legislation].*

For all of the above reasons, the Board finds that the actions of the employees on Friday April 23, 2010 constituted an illegal strike contrary to the provisions of Article 25.01 of the Collective Agreement and Section 10(2)(d) of the *Labour Act*.

Issue 2: Does the refusal to accept overtime constitute an illegal strike?

The second issue to be determined is whether the refusal of the employees of East Isle to work voluntary overtime constitutes an illegal strike.

The evidence presented indicates that since March 27, 2010 all of the employees had been asked to work overtime, and no one listed on the overtime sheets was willing. The Collective Agreement (Article 6.01 – as set out above) is clear that East Isle can request an employee to work overtime. However, the employee may choose whether or not to do so. On an individual basis, there would be no reason for the Board to find fault with an employee refusing to work overtime. Taken as a group, however, their collective refusal may amount to an illegal strike.

The overtime sheets filed as evidence clearly indicate employees were regularly available to work overtime prior to March 27, 2010, but not available at all after that date. Steve Martell also testified that there had been a union meeting in early April, 2010 during which the collective agreement negotiations and overtime issues were discussed. As stated earlier, Mr. Martell testified that comments were made at that meeting to the effect that if East Isle wanted employees available to work overtime, then it should re-hire the employees who had been laid off. The evidence before the Board is that since March 27, 2010, there has been a practice, whether sanctioned by the Union executive or not, of employees consistently refusing requests to work overtime shifts.

The Applicant presented hearsay evidence that there were threats made by some union members against others to discourage them from accepting overtime shifts. The evidence presented by the Respondent was that the union executive had no knowledge of any such threats having been made. The Board determines that the hearsay evidence

related to threats is not sufficiently reliable to form a basis for its decision respecting this issue.

While there is no clear definition of whether refusing overtime constitutes a "*strike*" in the *Labour Act* (see Section 7(i)(l) as set out above), the case law is clear that a concerted effort to refuse overtime constitutes an illegal strike. The Board refers to the clear principles set out in the following decision: *B.C.L. Canada Inc. v. A.C.T.W.U., Local 1332*, 1981 CarswellOnt 949 (OLRB); *Syndicat des employes de production du Quebec & De L'Acadie v. Canada (Labour Relations Board)*, 1984 CarswellNat 175 (SCC); *Cambridge (City) b. A.T.U., Local 1608*, 1989 CarswellOnt 1208 (OLRB); *C&C Yachts Manufacturing Ltd. v. Carpenters, Local 2737*, 1977 CarswellOnt 899 (OLRB); and *Mechanical Contractors Association of Ontario v. C.J.A.*, 1988 CarswellOnt 1225 (OLRB).

In *Cambridge (City) b. A.T.U., Local 1608*, 1989 CarswellOnt 1208 (OLRB), the Board stated at paragraph 5 as follows:

> *[...] Some employees seem to think that if their collective agreement specified that overtime is "voluntary" in that it permits them to refuse to work overtime on an individual basis, they may also do so, whether expressly or tacitly, in combination or in concert in order to put pressure on their employer either in support of some bargaining objective or otherwise. That is not so. Such a concerted refusal to work overtime constitutes an unlawful strike [...]*

In *B.C.L. Canada Inc. v. A.C.T.W.U., Local 1332*, 1981 CarswellOnt 949 (OLRB), where the union strongly denied that there was any ban on overtime, the Board stated at paragraph 16:

> *Here employees have been regularly working overtime for a considerable time, - some a little, some a lot – and it is a little hard to accept that all of them, to a man, would suddenly, on April 13, get "fed up" to the same degree, and refuse to work <u>any</u> overtime for <u>weeks</u> thereafter, except, to relieve a fellow employee on union business. The synonymous onset of debilitating fatigue in a group of employees whose overtime work varies considerably must be regarded as a medical miracle. Likewise, a sudden concern with family responsibilities [...]*

Based on the evidence, and for the reasons stated above, the Board finds that there is a concerted effort to refuse overtime by the employees of East Isle, which amounts to an illegal strike contrary to the provisions of Clause 25.01 of the Collective Agreement and Section 10(2) of the *Labour Act*.

Issue 3: What is the appropriate remedy?

East Isle has requested that a cease and desist Order be issued. The Union suggested that there is no good labour relations reason for this Board to issue such an order. The Board disagrees.

The illegal strike is ongoing in the sense that the continuing collective refusals to accept overtime constitute ongoing illegal strike actions by the employees.

Other Issues

At the hearing, the issue of appropriate notice was raised by the Respondent. The Board ruled at the hearing that appropriate notice was given and the hearing continued.

At the commencement of the hearing on Friday April 30, 2010, the Respondent (represented by the President of Local 1934, Mr. Frank Sweeny) noted that it had found out about the hearing the day prior and that it had not much time to prepare. There was no request made by the Respondent for an adjournment of the hearing. The comment was noted by the Board, and the hearing commenced.

The Applicant called two witnesses, Mr. Stephen Coleman and Mr. Michael Briggs. The Respondent cross-examined each witness. Following the Applicant's evidence, the Respondent was given the opportunity to commence its case, or to adjourn for the remainder of the day and resume the hearing on Monday, May 3, 2010. The Respondent preferred to adjourn for the weekend. The hearing resumed on Monday, May 3, 2010 at 12:00 p.m.

As soon as the hearing was called to order on May 3, 2010, Mr. Brian W. Beaton introduced himself to the panel, and advised that he was representing the Respondent. Mr. Beaton immediately raised the issue that proper notice had not been provided to the Respondent and requested an adjournment. Mr. Beaton indicated that he had been out of the country and had not received notice of the hearing, when he should have. He argued that, as a result, the Respondent has suffered prejudice.

The Board heard argument from both parties on the issue.

The Board reviewed its file and found that Mr. Beaton had received a copy of the Complaint on April 23, 2010 prior to his absence from the country. Mr. Beaton had spoken directly to the CEO of the Board and was made aware of East Isle's concerns with respect to the urgency of the matter. Furthermore, the Union executives were all aware of the Complaint and that no settlement had been reached.

The Notice of Hearing was hand delivered to the executive officers of the Respondent on Thursday April 29, 2010, was faxed to the office of Mr. Beaton on Thursday, April 29, 2010 and was faxed to Counsel for the Applicant at or about the same time.

The Board file indicates that the four individuals who were present and attended the hearing on behalf of the Respondent on Friday April 30, 2010 were the same four individuals who were given notice, and three of whom attended with the Board CEO to file the Reply on Thursday April 29, 2010. It was always open to the Respondent to seek counsel if it felt the need to do so.

The Respondent had the same notice as the Applicant. The fact that Mr. Beaton was out of the country is not sufficient to find that the Respondent has been prejudiced in any way. Mr. Beaton indicated in his argument that he is the only person in the Union structure who can offer representation to the Respondent. In the opinion of the Board, this is not a tenable position in the circumstances. Mr. Beaton knew of the complaint, and the Applicant's concerns of urgency prior to leaving the country. It was open to him to be available by cell phone, fax, or other means of instant communication or to arrange for someone to participate on his behalf. It is interesting to note that even the executive of the Respondent was having difficulty reaching Mr. Beaton as late as Saturday evening May 1, 2010, as advised by the President, Mr. Frank Sweeney by email to the Board CEO.

Accordingly, in all of the circumstances, the Board determined that the hearing had been properly called, that proper notice had been given to each of the parties, that each party had received the same amount of notice and that the hearing would continue. Furthermore, the Board had given the Respondent the benefit of the weekend to review the Applicant's case and to prepare its evidence.

Order

The Board orders as follows:

1. The employees of East Isle immediately cease and desist from engaging in illegal work stoppages.

2. The employees of East Isle immediately cease and desist from engaging in an unlawful strike, and, in particular, shall cease and desist from refusing to work overtime in combination, or in concert, or in accordance with a common understanding. However, overtime continues to remain voluntary pursuant to Clause 6 of the Collective Agreement, on an individual basis.

3. The Board remains seized of this matter for the purposes of enforcement, and at the Applicant's request, may schedule within two months that a hearing date be fixed in respect of damages allegedly sustained by the Applicant as a result of the work stoppages referred to herein.

Nancy E. Birt
Chair

Fraser MacDougall
Member

Blair James
Member

This Decision made by the Prince Edward Island Labour Relations Board on the 1st day of June, 2010, and issued under the hand of its Chief Executive Officer.

Shawn Shea
Chief Executive Officer