



GOVERNMENT OF PRINCE EDWARD ISLAND
LABOUR RELATIONS BOARD

J. J. Revell, B. Comm., M.B.A.
Chairman

W. S. MacKinnon
Chief Executive Officer

DEPARTMENT OF LABOUR
P.O. BOX 2000
CHARLOTTETOWN
PRINCE EDWARD ISLAND
C1A 7N8

DECISION

Re: Application for Certification

- between -

Local 282P United Food & Commercial Workers

APPLICANT;

- and -

Ellis-Birt Limited, Birt's Save Easy Division

RESPONDENT;

This Application was filed on May 29, 1980, and processed in accordance with procedures established by the Board. A Hearing to consider the Application was held on July 3, 1980.

The Applicant seeks certification for a unit described as "all employees except manager, office staff and those above the rank of manager employed in the store located in Ellis Bros. Shopping Centre, Sherwood, P.E.I."

The Applicant requested a Pre-Hearing vote which was held on June 13, 1980. As certain employees classifications were in dispute, the ballots were sealed and not counted until after the Hearing.

The employer has filed a copy of a collective agreement between Ellis Bros. Limited Supermarket Division and Ellis Bros. Employees Association. The employer argues that this purported collective agreement is in force and effect and thereby serves as a barrier to the Application. Evidence presented by the employer indicates that the initial collective agreement was for the period October 1, 1973, to October 1, 1976, and that Article 21 of that agreement provides for renewal of the agreement without change each succeeding year thereafter, unless written notice of desired change is served by either party. The employer argues that since no such notice of desired change was received, the agreement has renewed itself in each of the succeeding years and was in effect at the date of Application.

Evidence presented to the Board indicates that during the period October, 1976 to the present, no collective bargaining has taken place between the parties. As well, there appears to have been no activity which would indicate that the Ellis Bros. Employees Association has been active in other than what might be described as a social capacity. There have been no regular meetings, dues have not been collected, new employees have not been required or encouraged to be members and none of the other normal activities were present which would indicate that there was a relationship between the Employer and the Employees Association as contemplated by the provisions of the Act.

Consequently, the Board has no hesitation in finding that the collective agreement entered into on October 1, 1973, between the parties is not at this time a collective agreement as defined by the Labour Act and does not serve as an impediment to this Application.

The Board has considered the classification and duties of three employees whose status for inclusion in the bargaining unit was not agreed to. The Board finds as follows:

(a) Ray Hambley - Mr. Hambley apparently does work in a number of Ellis-Birt Divisions but the Board is satisfied that he has sufficient community of interest to be included in the bargaining unit.

(b) Bruce Stewart - Mr. Stewart is semi-retired and not in particularly good health. He does part-time janitorial and cleaning work, keeping his own hours and working, when in his own opinion, his health permits. The Board decides that Mr. Stewart should not be included in the bargaining unit.

(c) Lynn MacDonald - Ms. MacDonald does payroll work and other related activities for all of the Ellis-Birt Divisions and works primarily for Mr. Roger Birt, the President. The Board would exclude Ms. MacDonald from the bargaining unit.


Following the Hearing the Board ordered a count of the Pre-Hearing vote ballots including full-time and part-time employees and with the above exclusions. As a result of the vote the Applicant was shown not to have the majority as required by the Act.

The Application for Certification is therefore denied.

This Decision was made by the Labour Relations Board on July 3, 1980, and is issued over the hand of its Chief Executive Officer.

PANEL:

J. J. Revell, Chairman
Harry Snow, Member
George McInnis, Member


Wayne S. MacKinnon
CHIEF EXECUTIVE OFFICER