



**GOVERNMENT OF PRINCE EDWARD ISLAND**  
**LABOUR RELATIONS BOARD**

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Chief Executive Officer

DEPARTMENT OF LABOUR  
P.O. BOX 2000  
CHARLOTTETOWN  
PRINCE EDWARD ISLAND  
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**D E C I S I O N**

**RE:** **APPLICATION FOR CERTIFICATION - Application No. 87-003**

**BETWEEN:**

**NATIONAL AUTOMOBILE, AEROSPACE AND AGRICULTURAL  
IMPLEMENT WORKERS' UNION OF CANADA (CAW-CANADA)**

**APPLICANT**

**AND:**

**GARDEN PROVINCE MEATS (1985) INC.**

**RESPONDENT**

**AND:**

**UNITED FOOD AND COMMERCIAL WORKERS' UNION, LOCAL 1252 (IN  
TRUSTEESHIP) - AND - UNITED FOOD AND COMMERCIAL  
WORKERS' INTERNATIONAL UNION**

**INTERVENORS**

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**AND RE:** **AMENDED UNFAIR LABOUR PRACTICE COMPLAINT - INTIMIDATION  
AND COERCION - APPLICATION NOS. 87-010 AND 88-018**

**BETWEEN:**

**UNITED FOOD AND COMMERCIAL WORKERS' UNION, LOCAL 1252  
(IN TRUSTEESHIP)**

**COMPLAINANT**

**AND:**

**NATIONAL AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT  
WORKERS' UNION OF CANADA (CAW-CANADA)**

**RESPONDENT**

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**COUNSEL FOR CAW-CANADA**

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**DAVID W. HOOLEY**

**COUNSEL FOR UFCW**

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**EUGENE P. ROSSITER**

**COUNSEL FOR GARDEN PROVINCE  
MEATS (1985) INC.**

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**WILLIAM G. LEA, Q. C.**

**BACKGROUND:**

1. Application No. 87-003 is an Application for Certification filed by the Applicant (hereinafter referred to as CAW) on May 8, 1987. At the time of filing the Application, CAW also filed membership cards, receipts and a list of employees who wished CAW to represent them. A collective agreement was in effect between the Intervenor (hereinafter referred to as UFCW) and the Respondent, Garden Province Meats (1985) Inc. That agreement expired May 31, 1987 and thus the present application is timely in that it was filed within the time prescribed by Section 11 of the Labour Act, R.S.P.E.I. 1974, Cap. L-1.

2. While the current application is the only one that this Board has to concern itself with at present, it is one of several that have been filed with the Board. In order to understand this dispute, of major proportions, that has developed between these two unions, and the allegations and arguments that each advances, it is necessary to briefly review the previous events which ultimately culminated in the filing of the Applications that are currently pending before this Board.

3. UFCW Local 1252 was comprised of a great number of members residing in the Provinces of Newfoundland, Nova Scotia and Prince Edward Island. That Local represented approximately 1,000 employees at eight locations in this Province. Sometime prior to the spring of 1987, the Executive of Local 1252 became disillusioned, for lack of a better word, with the leadership of the International Union. Whether or not CAW was the only alternative contemplated by the Executive was not addressed, nor is it of any concern to this Board. Suffice it to say that during the spring of 1987, a merger with CAW was being actively pursued by the Executive of Local 1252. In short, they were seeking to affiliate with CAW and become disaffiliated from UFCW International. This change of heart, so to speak, by the Executive of UFCW Local 1252, resulted in the imposition of a Trusteeship on that Local on or about April 22, 1987. The Board was not advised, during the course of hearings, that the status of that Local had changed and the Board presumes the Trusteeship is still in effect.

4. It is interesting to note that prior to any applications being filed with this Board, Richard Cashin, the then President of UFCW Local 1252 had a new organization created, namely, Newfoundland Fishermen, Food and Allied Workers', Local 465. From the materials filed by CAW, it is apparent that CAW had decided to grant this particular body a Local Charter. The disenchanted executive of UFCW Local 1252, in seeking to merge with CAW, undoubtedly, were desirous of having a large membership following to bring to their new union. Although the Board heard evidence that the senior representatives at each local plant were contacted, and apparently supported the decision to merge with CAW, there was no evidence that the membership of UFCW Local 1252 were consulted prior to "Plan A" being implemented. "Plan A" was an attempt to have the Labour Boards of the various Provinces declare that the jurisdiction over the membership of UFCW Local 1252 was transferred to CAW. On March 20, 1987, the Board received an application for Amalgamation, Merger or Transfer of Jurisdiction, otherwise known as "Plan A". As it happened, the Board did not have to deal with that Application as it was withdrawn on May 11, 1987. At or about the same time as the Transfer of Jurisdiction was filed, employers were directed to remit employee dues to the new CAW Local.

5. After "Plan A" or the Transfer of Jurisdiction was abandoned, and in a couple of instances, prior thereto, CAW commenced filing applications for Certification on a Unit by Unit basis in this Province. Understandably, UFCW did not sit passively and let this state of affairs exist. They vigorously protested the Applications for Certification by filing Interventions, and in some cases, Unfair Labour Practice Complaints. They denounced the conduct of CAW between March 12, 1987, the date of the Executive

meeting in Newfoundland and April 20, 1987, when the Executive resigned en masse (excepting one member). The allegations they put forward ranged from UFCW employees actively working to recruit members for CAW, to theft and damage to property.

6. The foregoing outlines the backdrop against which this current Application was filed. It is evident that this inter-union raid will long be remembered by, not only the parties and the Labour Boards in the various Provinces, but also by the labour movement in general. It, undoubtedly, has been one of the longest and costliest disputes ever experienced and hopefully is not indicative of a new trend in labour relations. It has been suggested that as both parties are members of the Canadian Labour Congress, the Board should consider the raid by CAW in the context of the no-raiding pact in existence among the members of the Canadian Labour Congress. The Board believes the effect of such a provision is of no concern to this Application; but rather is a matter for the parties and the Canadian Labour Congress to deal with in the appropriate forum.

7. This current Application, numbered by the Board as 87-003, was originally processed according to the Labour Act and the Regulations made thereunder. A previous panel of the Board, after conducting a hearing, rendered a decision on October 22, 1987. UFCW applied for judicial review of that decision as well as other decisions made by the previous panel. On February 26, 1988, the Honourable Mr. Chief Justice Kenneth R. MacDonald, Chief Justice of the Prince Edward Island Supreme Court, Trial Division quashed the decision of the previous panel involving this Application. An earlier decision of His Lordship had quashed other decisions of the Board, unrelated to this Application. Those decisions were upheld by the Prince Edward Island Court of Appeal on May 24, 1988 and a direction was given to the Chairman of the Board to strike a new panel to deal with all outstanding matters involving CAW and UFCW. The present panel of the Board was then struck to deal with this Application, among others.

8. Despite the direction given by the Court of Appeal, CAW by correspondence dated June 3, 1988, sought to withdraw the Applications for Certification that it had filed in regard to the employees of Garden Province Meats (1985) Inc. and Cavendish Farms without imposition of a time bar and file new applications contingently upon that event occurring. After conducting a lengthy hearing, and affording the parties an opportunity to be heard on whether or not the Withdrawal should be granted, the Board declined to permit the Withdrawal for the reasons set out in its decision of October 11, 1988. The Board at that time also ordered that the Applications for Certification involving Garden Province Meats (1985) Inc. and Cavendish Farms were to be brought on for hearing as soon as possible.

#### PROCEDURAL:

9. During the course of the hearing, dealing with whether or not Withdrawal of this application, as well as that involving Cavendish Farms, would be granted without imposition of a time bar, Counsel for both CAW and UFCW agreed that the evidence in that hearing would form part of the record for the Certification Applications at, not only Garden Province Meats (1985) Inc., but also for Cavendish Farms (Board Application No. 87-005). As that evidence had been transcribed, the official transcripts of the hearings held on July 4, July 7, August 9, August 10, August 11, August 13, and September 10, 1988 were tendered as Exhibit A-53. The official transcript of evidence heard by the previous panel was also received by the Board and marked as Exhibit A-54. Thus, it is apparent that the cases involving Cavendish Farms (87-005) and Garden Province Meats (1985) Inc. (87-003) were being heard together at the request of the parties. To further complicate matters, both Counsel for UFCW and CAW agreed that the Unfair

Labour Practice Complaint (Board Application No.'s 87-010 and 88-018) filed by UFCW against CAW should be consolidated as the allegations contained therein, echoed those enumerated in the Interventions. In accordance with the authority granted to the Board by virtue of Section 3(11) of the Labour Act and Section 21 of the Regulations, the Board determined that it would consolidate the proceedings.

10. The complexity of the matters currently pending before the Board, and the manner in which they are intertwined becomes crystal clear when one realizes that UFCW filed a number of Unfair Labour Practice Complaints against various employers, in addition to the one it filed against CAW. Counsel for UFCW submitted that the Unfair Labour Practice Complaints should be dealt with first, while counsel for CAW argued that the Board should first determine the representation issue. For the reasons stated in the Board decision of October 25, 1988, it was ordered that the Unfair Labour Practice Complaints against any particular employer, would be heard prior to any Application for Certification involving that unit.

11. There were two Complaints filed by UFCW involving Garden Province Meats (1985) Inc. Both of those matters, namely the failure to negotiate and interference in the administration or representation by a trade union, were heard by the Board and separate decisions dealing with those matters are being issued concurrently with this Decision. A Complaint involving Cavendish Farms was brought on for hearing but was unable to be completed due to difficulties encountered in rescheduling. While that Complaint is presently scheduled to be completed in February of 1988, the Board determined, with the consent of Counsel, that it would proceed and complete the hearing insofar as it related to Garden Province Meats in order to enable the Board to render a decision in regard to this Application No. 87-003.

12. With the foregoing in mind, the Board has carefully reviewed the evidence as it related specifically to the Application for Certification involving the employees at Garden Province Meats.

**JURISDICTION:**

13. The jurisdiction of the Board to deal with this Application was questioned, in light of the fact that CAW did not file a copy of its Constitution concurrently when it filed the Application for Certification. As the Board derives its authority from the legislation, namely, the Labour Act, a review of same is necessary in order to fully address this issue.

14. Sub-section 4(1) of the Labour Act provides the Board with its broad jurisdiction to determine issues. Sections 11 and 12 of that Act deal with Applications for Certification. Sub-section 3(1) of the Regulations made pursuant to the Labour Act specifies that an Application for Certification is to be in Form 1 and Sub-section 3(2) states as follows:

3(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 list 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 bylaws, or other instruments or documents containing a full and complete statement of its objects and purposes;

(d) a list of its officers.

15. A review of the file dealing with this Application indicates as follows:

<u>DATE FILED</u>	<u>DOCUMENT FILED</u>
May 8, 1987	Application for Certification in Form 1
May 8, 1987	Membership Cards and Receipts
May 8, 1987	List of Names filed pursuant to Regulation 3(2)(a)
June 9, 1987	List of Names filed pursuant to Regulation 3(2)(a)
June 9, 1987	Membership Cards and Receipts
June 15, 1987	List of Names filed pursuant to Regulation 3(2)(a)
June 15, 1987	Membership Cards and Receipts
June 29, 1987	Constitution of CAW to Minister
June 29, 1987	List of Officers of Union
August 3, 1987	Resolutions

16. From the foregoing, it is evident that no constitution, rules or bylaws were filed pursuant to Regulation 3(2)(c) on the date the Application was filed; nor was a list of officers filed, as required by Regulation 3(2)(d). Sub-section 3(2) of the Regulations utilizes two words which the Board believes are of relevance, namely, the word "concurrently" and the word "shall". The word "shall", as defined in the Interpretation Act, R.S.P.E.I. 1974, Cap. I-6.1, is to be construed as mandatory. Therefore, those documents specified in Regulation 3(2) must be filed with the Board, but the crucial point in issue in these proceedings, concerns the date on which the documents must be filed. The documents, although currently forming part of the file, were not filed with the Application. Thus, it becomes critical to define the word "concurrently".

17. Concurrent is defined in Blacks Law Dictionary at page 363 to mean:

Running together; having the same authority; acting in conjunction; agreeing in the same act or opinion; pursuit of same course; contributing to the same event; contemporaneous ... [emphasis added]

The Shorter Oxford English Dictionary defines contemporaneous as "existing or occurring at the same time". In light of the foregoing, the Board has concluded the word concurrently as it appears in Sub-section 3(2) of the Regulations must be construed to mean that the specified documents are to be filed at the same time as the Application. To interpret that Section in any other fashion would be to overlook the plain wording of the legislation.

18. The Board has determined that as the constitution of CAW and the list of officers were not filed on May 8, 1987, the date of filing the Application, the Application is not one provided for by the legislation and the Board is without jurisdiction to deal with this matter. The Board believes a comment on Section 47 of the Labour Act and Section 27 of the Regulations made thereunder is warranted. Those sections can be, and undoubtedly have been, used by this Board to proceed in the face of a technical irregularity. The Board does not believe the omission, in the instant case, is a technical irregularity, and even if it were, the Board does not believe that those provisions can be utilized to give the Board jurisdiction, which it would otherwise not have.

19. The Board's conclusion on this point is supported by a previous decision of the Labour Relations Board rendered June 24, 1988 in the matter of International Union of Operating Engineers, Local 902, and Schurman Supply (Charlottetown Branch) and Certain Employees of Schurman Supply (Charlottetown Branch). In the Schurman Supply case, reference was made to a provision in the Nova Scotia legislation which is comparable to Section 3 of our Regulations. Sub-section 9(2) of the Regulations made pursuant to the Nova Scotia Trade Union Act, Stats. N. S. 1972, C. 19 states:

9(2) An application for Certification shall include or be accompanied by,  
(a) a copy of the constitution, rules and by-laws of the Union;...

The above noted provision was judicially interpreted in Hawker Siddeley Canada Limited and Labour Relations Board (Nova Scotia) (1975), 15 N.S.R. (2d) 613 (N.S.S.C., T.D.); [affirmed (1976), 24 N.S.R. (2d) 670 (N.S.S.C., A.D.)], Cowan C.J.T.D. stated, in respect to this issue, at page 621:

"The first ground upon which the Application is based, that is, that the Board did not have before it a proper Application for Certification, raises, in my opinion, a matter which is a collateral or preliminary question going to jurisdiction and, therefore, open to review. It seems quite clear that if, in fact, no copy of a constitution or of rules and by-laws of the Union accompanies the Application for Certification, the Application for Certification is not one which is provided for by the Regulations of the Board and, in particular, Regulation 9. The jurisdiction of the Board is to deal with an Application by a trade union for Certification and, if there is no Application for Certification which complies with the Regulations, and with the provisions of the Act itself, the Board is without jurisdiction."

20. In light of the comments contained in the Hawker Siddeley case, together with a review of the relevant legislative provisions, the Board can only conclude that the Application before it is not one provided for by the Regulations. The Constitution of CAW was not filed with the Board on May 8, 1987, the relevant date, and, in fact, was not received by the Board until June 29, 1987, a period of some two (2) months later.

21. Counsel for CAW argued that the Constitution of CAW was filed with the Board in another matter and thus, the Board should consider this fact in dealing with this issue. Specific reference was made to a letter, dated April 15, 1988 and submitted as Exhibit A-55, which is reproduced below:

Dear Mr. MacKinnon:

Re: Cavendish Farms - Application for Certification- New  
Annan, P. E. I.

We enclose herewith the following, namely:

1. Application for Certification;
2. Constitution, Rules and By-laws of the National Automobile, Aerospace and Agricultural Implement Workers Union of Canada, (CAW-Canada); and
3. A list of officers of the Canadian Auto Workers Union.

Trusting this is the information required to comply with the Act.

If anything further is required, please do not hesitate to contact me.

Yours very truly,  
Tweedy, Ross  
(Sgd) David W. Hooley

The Board does not accept the foregoing proposition that the Constitution was filed and is of the view that each Application must stand on its own merits. The fact that a copy of the CAW Constitution was previously filed with the Board in an Application involving Cavendish Farms, has no bearing on the current Application involving Garden Province Meats. The Constitution is not to be filed prior to, or subsequent to, the application for Certification - it is to be filed at the same time.

22. A submission the Board wishes to comment on concerns the duties of the Board's Chief Executive Officer. It was suggested to the Board that its Chief Executive Officer was obliged to either refuse to accept the current Application or advise CAW of its omission. It was argued that because the Board's Chief Executive Officer accepted the Application and made no mention of the missing documentation, the Board was therefore bound. The Board cannot and will not accept those contentions. The duties of the Chief Executive Officer of the Board are administrative in nature and are spelled out clearly in the Labour Act and the Regulations made pursuant thereto. There is nothing expressly or impliedly contained therein that places any duty on the Chief Executive Officer to advise the parties of the relevant provisions of the Labour Act or Regulations that must be satisfied. Further, there is nothing in the legislation that permits the Chief Executive Officer to speak or otherwise make determinations on matters that fall exclusively to the Board. The Labour Act is in place, and those parties who choose to appear before the Board, must be aware of its contents if they wish to avail themselves of it.

23. One final point that must be addressed deals with the issue of res judicata, and specifically whether this issue has previously been determined and thus, it is not now open to this Board to make any ruling on same. It was argued that the Honourable Mr. Chief Justice Norman H. Carruthers had decided this issue on July 23, 1987 in GDC-7353 involving CAW and UFCW, these very same parties. A careful review of that decision leads the Board to the conclusion that the issue before His Lordship was not the one the Board is concerned with, and support for this proposition is found when one refers to page 2 of the decision:

"The issue before me is whether the question of CAW-Canada's jurisdiction over the employees goes to the initial jurisdiction of the Board to hear the application for certification."

The foregoing outlines the issue that was before the Supreme Court. That is the issue the Board believes was addressed by the Honourable Mr. Chief Justice Norman H. Carruthers. It concerned the trade jurisdiction of CAW, not the jurisdiction of the Board to deal with the Application because of filings or non-filings. Thus, the Board has concluded the matter is not res judicata.

24. For all of the foregoing reasons, the Board rules the Application for Certification filed May 8, 1987 is not one provided for by the Regulations and thus the Board has no jurisdiction to render any decision or otherwise deal with the Application.

#### UNFAIR LABOUR PRACTICE COMPLAINT

25. On July 7, 1987, UFCW filed an Unfair Labour Practice Complaint (Board Application No. 87-010) with the Board alleging CAW violated Section 9(2)(e) of the Labour Act. UFCW sought leave to file an Amended Unfair Labour Practice Complaint (Board Application No. 88-018; Exhibit R-41) sworn to October 18, 1988. The Board determined the Complaint was in proper form and on November 22, 1988 granted leave to amend same.

26. As required by statute, the Chief Executive Officer inquired into both the Complaint and the Amended Complaint. His report was filed with the Board indicating no settlement was possible. As noted previously, the Complaint was consolidated with the Application currently before the Board as well as that involving Cavendish Farms. The Board's previous ruling on its jurisdiction dealt only with the Application and not with the Amended Unfair Labour Practice Complaint which the Board believes is properly before it. However, as the Complaint may deal with other units, the Board proposes only to dispose of the Amended Complaint insofar as it relates to Garden Province Meats. This will leave open to UFCW and CAW, an opportunity to address the matter insofar as it relates to Cavendish Farms.

27. The Amended Complaint outlines the alleged violation of Section 9(2)(e) of the Labour Act as follows:

"The Respondent (hereinafter referred to as CAW) or persons acting on its behalf (directly or indirectly), and under its influence and direction (directly or indirectly) used coercion, threats and/or intimidation, to encourage employees in Units where the Certified Bargaining Agent was the Complainant into becoming members of and/or engaging in the activities of CAW and/or its local, and into refraining from membership in and engaging in the activities of Local 1252.

Paragraph 4 of the Amended Complaint provides more specifics of the alleged violations including misrepresentations to members of Local 1252; unlawful taking of assets, use of the staff of UFCW Local 1252 in the organizing drive of CAW; deception which operated to coerce or intimidate the members of Local 1252 into joining CAW; intentional interference with the bargaining rights of UFCW Local 1252, including encouraging management not to negotiate and interfering in the processing of grievances; physical and/or verbal threats of bodily harm including direct and indirect coercion and intimidation, preventing a free and open campaign; and carrying out activities and conduct referred to in the evidence heard by the Board in July, August and September of 1988.

28. The "misrepresentation" referred to concerns the plan to disaffiliate from UFCW Local 1252 and affiliate with CAW or "Plan A" as it has been described. While the Board has heard convincing evidence that "Plan A" was in fact attempted, the Board does not have to rule on whether or not it was misrepresentation to the



members as it clearly has no relevance to Section 9(2)(e) of the Labour Act, which states:

9(2) No employee, trade union or person acting on behalf of a trade union shall ...

(e) use coercion or intimidation of any kind with a view to encouraging or discouraging membership in or activity in or for a trade union or labour organization.

29. The Board also finds that the allegation involving the unlawful taking of assets has no bearing on Section 9(2)(e) of the Labour Act. Even if it did have some bearing, the Board has heard evidence that there is a civil action pending in Newfoundland with regard to certain monies, as well as a matter pending in the Supreme Court of this Province (Exhibits A-22 and A-23). In light of these pending actions, the Board believes it would be inappropriate for it to comment or otherwise attempt to usurp the jurisdiction of the Courts. In terms of the missing files, again the Board does not believe this is relevant to a determination under Section 9(2)(e) of the Act. While UFCW and its officials were, understandably, upset about the fact that certain documents were not present when they took possession of their office or offices in this Province, it is not for this Board to speculate as to whether or not such materials were stolen and if so, who is responsible for same. There are other avenues the parties can pursue in this regard, should they choose to do so.

30. There was also an allegation that CAW unlawfully took the union dues to which Local 1252 was entitled. Again, the Board states this is of no relevance to the Board in determining whether there was intimidation or coercion of the employees of Garden Province Meats. In any event, while Exhibit R-12 clearly indicates an attempt was made to divert the funds to CAW, the uncontradicted evidence leads the Board to conclude that no union dues for UFCW Local 1252 members found their way into the CAW coffers.

31. Turning now to the alleged violation which centres on UFCW Local 1252 staff being utilized by CAW in its organizational campaign, the Board has concluded that this did in fact occur. James MacDonald, the former Business agent for UFCW Local 1252 in this Province was employed by UFCW until he resigned on April 20, 1987. After his resignation, he became a full time employee of CAW. Mr. MacDonald did not testify before this panel, however, the evidence he gave to the previous panel was submitted as Exhibit A-54. His evidence clearly indicated that between March 12, 1987, when "Plan A" went into effect, and April 20, 1987, he utilized UFCW assets to bring its members into the CAW fold (Exhibit - A-54). Exhibit R-17 indicates he purchased 17 receipt books during that period of time. He also indicated that he was personally responsible for the organizational campaign at Garden Province Meats. The Board has noted that the first membership card signed at Garden Province Meats is dated April 13, 1987 and is signed by Mr. MacDonald as "Collector". This was some 7 days prior to Mr. MacDonald's resignation. That UFCW would be upset over such reprehensible conduct is understandable; however, the Board will only concern itself with such conduct if it was designed to accomplish or in fact operated to intimidate or coerce the employees into joining CAW. It is only in that situation that Section 9(2)(e) of the Act will apply and this point will be addressed in some detail later in this decision.

32. On the issue as to whether or not CAW interfered with the bargaining rights of UFCW, the Board is satisfied that CAW directly or through its agents interfered with those exclusive rights granted to the Certified Bargaining Agent, UFCW. The basis for the Petition, submitted to the Board as Exhibit A-24, stating in

essence that the employees of Garden Province wished the issue of representation resolved before negotiations commenced, came from the CAW office in Summerside. Exhibit R-16, containing minutes of the union meetings involving Garden Province Meats employees clearly indicates that James MacDonald, on June 8, 1987, while an employee of CAW, was actively settling or otherwise dealing with grievances for those employees. That is a duty, obligation and a right which falls into the exclusive realm of the certified bargaining agent. These occurrences not only interfered with the rights this Board had previously granted to UFCW on September 7, 1956, but also showed a complete disregard for a previous order granted by this Board.

33. The Board also heard evidence that Harold Snow and Ernie Coyle, two employees of Garden Province Meats who are strong proponents of the move to CAW, halted negotiations with the consent of management. While Mr. Snow and Mr. Coyle appear to have verbally stated they did not want to negotiate with management, the Board accepts the evidence that Mr. MacDonald was present in the building; and according to the evidence of Mr. Snow, was there to offer advice. While the Board was not apprised of what advice was offered, the Board does not accept the evidence of Mr. Snow that the decision to halt negotiations was made by himself and Mr. Coyle alone. Exhibit R-16 clearly indicates that Harold Snow was still dealing with James MacDonald insofar as grievances were concerned and that the minutes of the employees' meetings were being referred to as meetings of "CAW Local Garden Province Meats".

34. The servicing of employee grievances was addressed in some detail and various Exhibits were tendered. After hearing the evidence and reviewing the Exhibits, the Board is satisfied that a copy of the grievance reports had previously been provided to the local union or its representative. The Board accepts the evidence of Mark Flannigan that those were not provided to him after he came to this Province to represent the interests of the members of UFCW.

35. The Board heard evidence that the grievances of the employees at Garden Province were not being processed, or were being processed, without input from UFCW or its representative. It had been suggested that Mr. Snow and Mr. Coyle were the in-plant committee and as such, were representatives of UFCW, who had an obligation to represent the employees at the hearing of grievances and like matters. The Board does not accept this proposition. While those individuals may have represented UFCW prior to the spring of 1987, by Mr. Snow's own admission, the loyalties of both he and Mr. Coyle were clearly with CAW after March 12, 1987. It is inconceivable that this Board could be asked to believe that those individuals still represented UFCW when their interests were so separate and distinct. There is no doubt in the minds of the Board members that those individuals sought, by pursuing every available option, to preclude UFCW from maintaining its status at Garden Province Meats. In fact, it is likely that Mr. Snow, as well as Mr. MacDonald, and undoubtedly, Mr. Coyle, were the driving forces behind the move to CAW.

36. The cumulative result of these actions is that UFCW was not able to function as the bargaining agent for those employees at Garden Province Meats, despite the fact that they held a Certification Order. The Board is fully cognizant of the legislative provision that permits employees to become members of a trade union. However, the Board emphasizes that if labour wishes the protection that the Labour Act grants, they must be prepared to respect the rights that it bestows upon others. The Labour Relations Board must ensure that the rights and duties prescribed by the Act are adhered to. If it does not, it not only sets an unsatisfactory precedent, but it sends out a message to the industry that severe and gross interference will be condoned by the Board. This cannot be permitted to occur, or if it does, it will not be tolerated by this Board.

37. The Labour Act was enacted to enable harmonious industrial relations to be accomplished. It clearly sets out the obligations of the parties and the Board will strive to ensure that those are fulfilled. Violations of the legislation, however innocuous, will not be condoned.

38. The Board also recognizes that an inter-union raid situation is not a nicety. In fact, after sitting through this hearing, this raid has demonstrated in the most unequivocal way, a number of the reasons, certain sectors reiterate in their opposition to unions. The acts of interference, as demonstrated to the Board, fly in the face of industrial relations, let alone harmonious industrial relations. In light of the acts complained of, the Board questions whether either Union has the interests of the employees as the primary concern. UFCW has, undoubtedly, been using the dues of the employees to oppose CAW, while CAW, on the other hand, has not assisted in the resolution of the situation. As a result of these legal manoeuvres, those employees at Garden Province Meats have been without a contract or a raise for a period of some 20 months. What would have been the harm with negotiations proceeding as normal, and if this Application was successful, CAW could take over any Collective Agreement that was ultimately in place. These are questions the Board has posed but does not have any answers for.

39. The Board cannot, nor will it permit the disruption for labour relations and intentional interference that has occurred in this case to reoccur. The Board will strive to ensure that this situation is an aberration in the industry. If the allegations made in this case were made in regard to employees seeking to unionize, it would not be sanctioned by the Board, nor would it be if it involved interference from management. Why then should there be any distinction made between unions?

40. The Board also heard evidence that there has been intimidation and coercion directed at certain of the employees of Garden Province. Specifically, one instance related that concerns the Board, involves an employee being slammed up against a locker by another employee. Certain UFCW supporters were called vulgar names and threatened or assaulted in some fashion. While, the Board accepts that these events did occur, the Board has not heard evidence that would lead it to conclude that James MacDonald actively committed any of the acts referred to aforesaid.

41. While Harold Snow is a rank and file employee, the facts clearly lead the Board to the conclusion that CAW were fully aware of his every move. The Board is of the opinion that CAW cannot sit passively by and watch, any more than they can actively encourage, the rank and file employees to take certain actions, and then submit that CAW is not responsible because no official of CAW acted in such manner. CAW knew or should have known of the actions of certain individuals. On the facts of this case we can make no distinction between CAW on the one hand and its strong supporters such as Mr. Snow on the other. It is for these reasons that the Board must state that the actions, of those individuals who are leading the charge to CAW, are deplorable. The Board reiterates that it hopes such behaviour is not indicative of a new trend in labour relations.

42. The Board finds that the employees of Garden Province Meats were firm in the position they were advocating. While this is permissible, intimidation and coercion is not encouraged, nor will it be condoned. The Board fails to see how a distinction can be made in this case between the position of CAW and that of its main proponents at the plant. The Board believes the employees at Garden Province Meats were directly or indirectly intimidated by the rank and file organizers. There is no other conclusion that can be reached by the Board when one considers the fact that the active rank and file organizers for CAW were ensuring or encouraging the ostracization of UFCW supporters. The incidents

of violence and name-calling related to the Board, leads the Board to question how one could conclude any employee would voluntarily support UFCW in light of what they saw transpiring around them to others advocating similar views. That amounts to intimidation and coercion - pure and simple.

43. In terms of whether or not CAW deceived the employees, that allegation is not a proper consideration for the Board in terms of the Amended Unfair Labour Practice Complaint. The Board does realize, however, that the knowledge of the employees is limited and this point was demonstrated time and time again to the Board. The Board was advised by Kevin Gallant and Donald MacLean that employees had been advised that if they negotiated with UFCW while this Application was pending, they would be unable to change unions. The Board believes this is totally erroneous and a clear misstatement to the employees.

44. The allegation involving the various conduct of CAW that was referred to during the course of hearings in July, August and September 1988 has been dismissed by the Board for lack of particularity. If the parties wish to address a specific instance, the Board will deal with it, but, we will not permit a broad allegation to be utilized which in essence results in a fishing expedition.

45. The Board, after having concluded that there was intimidation and coercion of the employees, must determine whether or not such violations constitute a violation by CAW of 9(2)(e) of the Labour Act. After reviewing the evidence, the Board has concluded that the organizers at the plant were acting on behalf of CAW. They acted with the knowledge and full support of CAW and its resources. To permit CAW to escape sanction because its full time employees were not involved would be to overlook the clear path and methodology employed by CAW. Thus, the Board has concluded that CAW directly and/or indirectly permitted the intimidation and coercion of employees at Garden Province. Therefore, the Board has determined that there was a violation of Sub-section 9(2)(e) and must now impose the appropriate remedy.

46. Section 10(3) of the Labour Act gives to the Board its authority to impose a remedy. A review of that provision clearly indicates the Board can make such order as it believes "just and necessary". The Board has determined that an order directing CAW, its officials, officers, agents and other like responsible officials to cease such deplorable conduct is warranted. The Board also feels that had it had jurisdiction to deal with the Certification Application, this conduct of CAW would effectively have precluded CAW from being successful on its Application for Certification.

47. In addition, while an extraordinary remedy, in order that the climate at Garden Province Meats stabilize, the Board directs and so orders that UFCW have an uninterrupted period of time in which to utilize the certification rights it has acquired in regard to the employees at Garden Province Meats. That period of time will be six months from the date of this Order. The Board feels that this period of time is necessary and imperative in the circumstances. The employer, and the employees need some stability. The Board feels it is appropriate to send out a message to the labour movement in this province that such disrespect for the employees and such disregard for labour relations will not be tolerated. We trust that this decision will ensure similar conduct never occurs in this Province.

48. While UFCW requested dismissal of all Certification Applications filed, for the reasons noted earlier, each will be dealt with separately. If the parties wish to address certain allegations in the context of those Applications, the Board will entertain same. In light of the orders aforesaid, an award is not necessary. For the reasons noted in the decisions being issued

concurrently with this decision, no costs will be ordered.

**CERTIFICATION APPLICATION:**

49. In the event that the Board is incorrect in its interpretation as it affects jurisdiction, the Board has reviewed the evidence insofar as the Application for Certification is concerned and would have made the following disposition with regard to same.

**TRADE UNION:**

50. The Board is satisfied that CAW is a trade union as defined by Section 8(1)(m) of the Labour Act and no further comment on this point is required.

**APPROPRIATE UNIT:**

51. Section 11(1) of the Act imposes an obligation on the Board to determine whether or not the unit is appropriate for collective bargaining. The unit applied for included "all employees of Garden Province Meats (1985) Inc. with the exception of those exempted under the Labour Act".

52. A subsidiary issue was addressed by the parties concerning whether or not CAW had the necessary trade jurisdiction to enable it to encompass the employees at Garden Province Meats. Article 5 of the Constitution of CAW, filed with the Minister on June 29, 1987 and tendered as Exhibit R-8 states as follows:

The National Automobile, Aerospace and Agricultural Implement Workers Union of Canada, (CAW-Canada), shall take in and hold jurisdiction over all employees of workplaces engaged in the manufacture of parts (including tools, dies, etc.) and the assembly of propelled products, aerospace, agricultural implements, and other industries, including employees engaged in office work, sales, distribution and maintenance thereof and such other branches of industry as the National Executive Board shall decide, the jurisdiction of this National Council shall be full and final.

53. The evidence of Hemi Mitic contained in Exhibit A-54 was referred to by Counsel for CAW. Specific reference was made to his comments on the meaning of the term "other industries". While the intent of that term being inserted, was undoubtedly to broaden the jurisdiction of CAW, the Board must rely on the words used, and thus the Ejusdem Generis rule applies; namely, the words "other industries" must refer to those industries of similar character to the ones mentioned previously. The Board has therefore determined that the term "other industries" cannot be expanded to include the employees of Garden Province Meats, a kill and chill plant.

54. However, the Board does believe CAW had the necessary jurisdiction to enable the employees of Garden Province Meats to become members and that CAW had such jurisdiction on May 8, 1987, the date the application was filed. In stating this, the Board relies on the concluding words of Article 5, specifically "and such other branches of industry as the National Executive Board shall decide". The National Executive Board of CAW had the power to include other branches of industry and the Board finds that it did, in fact, determine to include those employees that were represented by Richard Cashin, the former President of UFCW Local 1252. The minutes of a meeting held in March of 1987 indicate in unequivocal terms that the CAW National Executive Board were unanimous in

merging the two organizations, and by necessary implication, that would include the employees of both.

55. Having concluded that CAW had the necessary jurisdiction, the Board has determined that the unit applied for is appropriate for collective bargaining. On this latter point, the employer did not dispute the unit, in the Reply it filed with the Board, and UFCW could not very well argue that the unit was not appropriate in light of the fact that UFCW holds a Certification Order dealing with the very same employees.

**MAJORITY SUPPORT:**

56. The Board has carefully reviewed the membership evidence and receipts submitted by CAW. As that evidence is not available to any other party, the Board has a duty to ensure that such evidence is proper in all aspects. After reviewing the evidence and directing the Chief Executive Officer to inquire into one specific irregularity, the Board has determined that the membership evidence shows the following irregularities on their face, namely:

1. There are receipts dated prior to the membership cards being signed;
2. There are several instances where the person who issued the receipt is not the person signing the membership card as the "Collector";
3. The date appearing on the receipts is not the same date the employee has certified to the Board that the membership fee was paid;
4. There is one membership card without an accompanying receipt to indicate that the individual in question paid the required sum;
5. There are instances where the Collector has not signed the space provided;
6. There is one membership card dated several months after the Application was filed;
7. There are two cards submitted for employees who are not included in the employer's list of employees contained in its "Reply" and a subsequent inquiry by the Board, pursuant to Section 12(3) of the Labour Act, has determined one of those individuals has signed his name in a different fashion than he normally does, leaving the Board with some question as to whether or not he actually signed the card; and
8. There is one case where the Board heard uncontradicted evidence that an employee had signed a card and given the required \$2.00 to a Collector, namely, Kevin Green, yet the card submitted bears the signature Jim MacDonald as Collector.

57. In addition, four employees testified indicating they had signed CAW cards but were now supporting UFCW. In light of this, the Board has deleted the membership cards of those individuals from its consideration on majority support.

58. The Board has concluded that approximately 30% of the membership evidence submitted is deficient in some aspect. This number is without considering the viva voce evidence heard by the Board from those employees who indicate they no longer support CAW.

Because the membership cards are a form of hearsay, not available to examination by the other party, the authorities suggest that a high standard must be adhered to in obtaining and submitting such evidence. The Board finds that those standards have not been met in this instance and thus no reliance can be placed on any of the cards having the deficiencies noted above.

59. In light of the defects noted in the cards submitted, the Board has had to determine whether or not it would accept the remaining cards as proof of majority support or whether those cards were also tainted and could not be relied upon. The Board scrutinized all of the membership evidence to determine whether or not a pattern could be seen. The Board has concluded that six individuals were involved in signing the cards as "Collector" and issuing the receipts. Out of those individuals, only the membership cards submitted by one Collector are not deficient in any of the aspects noted earlier. In fact, one of the Collectors whose name appears on cards indicating deficiencies is James MacDonald, a CAW employee.

60. The Board is of the view that CAW or its organizers knew or ought to have known of the irregularities the Board has outlined in some detail. The Board expects the parties appearing before it to be candid and forthright and to bring any discrepancies to the attention of the Board. It is interesting to note that in the case involving a non-pay of a former employee at Cavendish Farms, CAW adduced a photocopy of the card and receipt at the hearing (Exhibit A-33). Thus, it is likely that the same information was available in the case of Garden Province Meats. For whatever reasons, CAW chose not to address this issue and the Board believes that was tantamount to a fraud being committed on the Board. If counsel for CAW had been aware of these irregularities, he undoubtedly would have brought them to the attention of the Board. Had that been done, the Board might have been inclined to disregard only the deficient cards. The fact that it was not, has weighed heavily against CAW in the Board determining that all membership evidence submitted is unreliable.

61. For the reasons noted aforesaid, had the Board determined it had the jurisdiction to deal with the application, it would have discarded the membership evidence in its entirety.

**VOTE:**

62. As the Board has concluded the membership evidence is deficient and is not reliable, consideration must be given as to whether or not the Board would have ordered a representation vote pursuant to Section 12(3) of the Labour Act. After reviewing the facts and the law on this point, the Board has decided it will not and would not have exercised its discretion to order a vote.

63. There is clear and convincing evidence before this Board that a state of confusion existed when the membership cards were signed in the spring of 1987. The purpose of a vote is to enable the Board to have a clear indication of the true wishes of the employees. In light of the fact that the employer failed to negotiate or otherwise deal with the incumbent union, and in fact, dealt with CAW representatives, the Board believes that there is and has been a perception of employer favouritism towards CAW. In addition, there have been allegations that organizing activities on behalf of CAW, both in terms of signing up membership cards and petitions, occurred on company premises on company time. Counsel for the employer indicated he would be taking no active part in the Certification proceedings, thus, the Board has no evidence before it as to whether or not the employer knew about these activities. However, the Board is satisfied that the employer's premises were utilized in the organizational campaign of CAW, and regardless of whether the employer was aware of that, such activities could be perceived by the employees as employer bias toward CAW.

64. There has also been evidence led that there exists at Garden Province Meats, a state of extreme tension among the employees and the Board accepts this as fact. Union raids by themselves, are normally intense affairs and this one appears to be no different. There also exists at the plant, a situation of mistrust among the employees insofar as the unions are concerned. This became crystal clear when the Board heard evidence that employees were told negotiations could not proceed until the Application was disposed of, as well as the propaganda war that has been waged by both Unions since the date of the Application. While the Board is not normally concerned with the information that is disseminated, one specific example warrants a comment. An employee testified that when handed a document by a UFCW representative, he responded to the effect that the document was their, meaning UFCW's, interpretation of what had transpired before the Board. It later became apparent that the document in question was, in fact, a copy of the Boards decision. This supports the Board findings that there is mistrust present at the Plant.

65. It has been suggested to the Board that the Petitions filed as Exhibit A-24, A-6 and A-56 should be given some weight. The Board rejects this submission as there was no evidence submitted in Terms of the preparation or circulation of the latter two and the evidence disclosed that some people did not read Exhibit A-24 and thus, could not know what they were signing.

66. For the foregoing reasons, the Board would not have ordered a representation vote as it is not satisfied that a representation vote would reflect the true unfettered wishes of informed employees.

#### CONCLUSIONS:

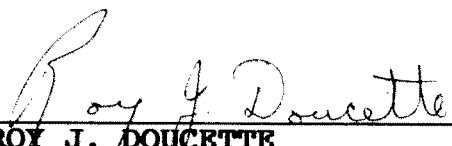
67. The Board, for the reasons outlined in this decision, has concluded as follows:

1. The Board does not have jurisdiction to deal with the Application as it is not one provided for by our legislation;
2. The allegations of intimidation and coercion as contained in the Amended Unfair Labour Practice Complaint have been supported. Thus, there was a violation of Section 9(2)(e) of the Labour Act. The Board ordered that such conduct effectively would have precluded CAW from being successful on its Application and it would have been dismissed. The Board further orders that such conduct cease immediately and that UFCW be granted a period of 6 months uninterrupted by any activities or conduct of CAW in which to restore some stability to the situation that currently exists and to its Certification rights; and
3. If the Board did have jurisdiction to deal with the Application for Certification, it would have been dismissed for lack of majority support without a representation vote.

68. In accordance with Section 10(4) of the Labour Act, the Board directs that service of this decision on UFCW and CAW as it relates to the Amended Unfair Labour Practice Complaint, shall be by serving a copy on the solicitors who represented the parties during the course of this hearing.



THIS DECISION MADE by the Labour Relations Board and issued under the hand of its Chief Executive Officer this 31st day of January, A. D. 1989.

  
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ROY J. DOUCETTE  
CHIEF EXECUTIVE OFFICER

**PANEL:**

M. Lynn Murray - Chairman  
Gerald Doyle - Member  
Elizabeth MacFadyen - Member