



2. As required by statute, the Chief Executive Officer inquired into both the Complaint and Amended Complaint. His report was filed with the Board indicating no settlement was possible.

3. The parties had agreed on January 14, 1989 that each had adduced all evidence in regard to the Amended Complaint and both have advised the Board, through its Counsel, recently that they do not wish to make further submissions in regard to this matter.

4. On January 31, 1989, the Board rendered a decision on the Amended Unfair Labour Practice Complaint insofar as it related to the conduct of CAW at Garden Province Meats (1985) Inc. The Board had indicated in that decision, that although the remedy requested in the Amended Complaint was the dismissal of the Certification Applications filed by CAW at all units, each unit would be dealt with separately. This decision will dispose of the Amended Complaint in its entirety.

5. 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:

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

6. Section 9(2)(e) of the Labour Act 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.

In order for the Board to find CAW committed an Unfair Labour Practice, the violation must fit squarely within the above noted section.

7. In its decision of January 31, 1989, involving these parties, in regard to Garden Province Meats (1985) Inc. (Board Application Nos. 87-010/88-018), the Board determined the allegations of misrepresentation, unlawful taking of assets and use of staff of UFCW Local 1252 in the organizing drive of CAW had no relevance to Section 9(2)(e) of the Labour Act. The Board does not intend to depart from its previous ruling and thus, no further comment on those allegations is necessary.

8. In accordance with the aforementioned Board decision of January 31, 1989, the Board dismisses the Amended Complaint insofar as it makes reference to deception. The Board believes this is not a proper consideration for the Board in regard to an alleged violation of subsection 9(2)(e) of the Labour Act.

9. The Board dismisses the allegation contained in the Amended Complaint regarding the various conduct of CAW that was referred to during the course of hearings in July, August and September 1988 for lack of particularity.

10. The Board also dismisses the Amended Complaint insofar as the following units are concerned; namely, Purity Dairy, C.E.G.F., Amalgamated Dairies, Central Farmers Co-operative Association, and Usen Fisheries. There has been no evidence led whereby the Board could reasonably conclude that CAW committed unfair labour practices in regard to those units.

11. The Board is satisfied that the bargaining rights UFCW held at Cavendish Farms were interfered with. Negotiations or more particularly, the conciliation process was halted at the request or with the consent of Gordon Whitlock, Gordon Porter and James Arsenault. The Board believes that UFCW had no involvement with the resolution of grievances. 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, a Deputy Trustee for UFCW, that these were not provided to him after he came to Prince Edward Island to represent the interests of the members of UFCW. Thus, UFCW was unable to deal effectively or otherwise with grievances of its members.

12. The Board need not reiterate all of the points canvassed in its decision of January 31, 1989 regarding Garden Province Meats (1985) Inc., other than to state that the acts of interference with the certified bargaining rights that UFCW currently holds at Cavendish Farms, fly in the face of orderly labour relations. The Board is the only body which can revoke or alter those certified bargaining rights and until such time as that occurs, the exclusive rights remain with UFCW.

13. Turning to the allegations of intimidation and coercion, the Board is satisfied beyond any doubt, that physical and verbal threats of violence occurred at Cavendish Farms, both on plant premises as well as outside the plant. The Board is satisfied that the RCMP were called at various times in regard to some of these acts. The Board bases these findings on the evidence that was adduced by UFCW, some of which was corroborated by the witnesses who testified on behalf of CAW. In particular, the Board finds as fact that the following events occurred:

1. Jordan MacAusland - testimony August 9, 1988

- (a) After a CAW meeting, where he and others had questioned the move to CAW, a crowd surrounded him and the others with him as they were leaving the meeting;
- (b) After the meeting referred to aforesaid, someone had placed glue in the locks of Mr. MacAusland's toolbox and left a note which stated "traitor";
- (c) Mr. MacAusland's vehicle was damaged in the plant compound between Christmas of 1987 and January 1, 1988;
- (d) Mr. MacAusland's father's car, while outside his residence, was damaged in or about the month of July, 1988;
- (e) Larry Blacquierre indicated to Mr. MacAusland on July 8, 1988 words to the effect that "after this is over, some people are going to get hurt";
- (f) On July 18, 1988, Ronnie Arsenault clenched his fist and proceeded to hit the palm of his other hand with his fist, while stating to Mr. MacAusland "you're mine";
- (g) On July 19, 1988, Ronnie Arsenault stated to Jordan MacAusland words to the effect that "I'm going to get you. I'm going to get you today, that's a promise, right after work";
- (h) Ronnie Arsenault almost collided with Mr. MacAusland when walking past him, despite the fact that the hallway was twenty or thirty feet wide and no one else was present to create an obstruction;
- (i) Ronnie Arsenault permitted his vehicle on July 19, 1988 to cross over the yellow line of the highway that Mr. MacAusland was travelling on, thereby forcing Mr. MacAusland's vehicle on to the shoulder of the road. Fortunately for all, an accident did not occur;
- (j) Gordon Porter, one of the driving forces behind the move to CAW, upon learning Mr. MacAusland had apparently been talking union business with another employee on company time, indicated to Mr. MacAusland words to the effect "Let's go out of the plant property and settle it my way". Mr. Porter indicated to the Board that this was a figure of expression and he had no intention to harming Mr. MacAusland. The Board does not accept the evidence of Mr. Porter that it was

a figure of expression. The Board finds the words of Mr. Porter were nothing other than a threat to Mr. MacAusland.

- (k) There were various other instances related to the Board wherein there were veiled threats or innuendos, so that Mr. MacAusland or any reasonable person could only conclude that his physical well-being was in danger.

2. Linda MacAusland - testimony August 10, 1988

- (a) Mrs. MacAusland, a sister-in-law of Jordan MacAusland, and UFCW supporter related several incidents to the Board in which she had been on the receiving end of vulgarities expressed by Ronnie Arsenault.
- (b) She was grabbed by the shoulders by Gordon Porter at a local Charlottetown nightclub. He then proceeded to shake her while stating words to the effect that she did not know what she was doing.

14. Mr. Porter testified before this Board and the Board believes that he did threaten Mr. MacAusland as well as physically shake Mrs. MacAusland. In light of these acts, the Board can only conclude that if known UFCW supporters were being threatened physically and verbally, such could only operate to intimidate or coerce the other employees to join the move to CAW. After Mr. MacAusland became known as a UFCW supporter, he was ostracized by the other workers at the plant and in fact, he advised the Board that he was seeking other employment.

15. While the higher echelon of management at the plant attempted in some fashion to alleviate the tension, it is obvious that certain foremen or people in authority had knowledge of the events that were occurring. They chose not to do anything about it which could only leave the impression in the eyes of the average worker, that management supported the move to change unions.

16. Mr. MacAusland was petrified for his safety when he testified before the Board on August 9, 1988. In fact, in order to hear Mr. MacAusland's evidence, the Board, on consent of the parties, excluded from the hearing room all members of the public with the exception of Counsel for both parties and one advisor to each. To allow those excluded to hear Mr. MacAusland's testimony, a speaker was placed in an adjoining room.

17. It was Mr. MacAusland's belief that certain workers at Cavendish Farms were "not wise". In light of the encounters he had had at the plant with various people, and the findings of fact the Board has made, the Board is inclined to agree with his view.

18. Subsequent to Jordan MacAusland testifying on August 9, 1988, counsel for UFCW suggested to the Board that Mr. MacAusland was, in fact, threatened as a result of his previous testimony before the Board. The Board exercised the powers conferred upon it by virtue of the Labour Act and issued a subpoena to Jordan MacAusland to appear on September 10, 1988. Mr. MacAusland reappeared and requested that no one else remain in the room to hear his testimony. The Board excluded all members of the public from the hearing room, excepting Counsel for the parties and an advisor for each. On this occasion, those excluded did not hear his testimony. Mr. MacAusland indicated that he had, in fact, been threatened by one Blaine Simpson after he originally testified

before the Board on August 9, 1988. It was obvious from the evidence that these threats to his person arose as a direct result of his prior testimony to the Board. In addition, Mr. MacAusland was informed by Mr. Simpson that he would no longer have a job when CAW became the certified bargaining agent. Neither Ronnie Arsenault or Blaine Simpson were called to refute any of the numerous events related to the Board in which their names arose. Thus, the Board is left with the uncontradicted testimony of Jordan MacAusland and Linda MacAusland.

19. The UFCW officials were also threatened in a certain fashion. One incident related to the Board involved a group of workers surrounding their vehicle, with one employee jumping on the hood of the vehicle. A security guard had to physically remove the individual from the hood to enable the officials to leave the premises. If attempts are made to intimidate these people who have considerable experience in union campaigns, the Board believes this lends support to its findings that the employees would also have been intimidated.

20. Gordon Whitlock, a former plant worker, who became a full time employee of CAW testified before the Board. The evidence shows he was a strong advocate on behalf of CAW and that he used every option available to him to ensure success in the move to CAW.

21. Gordon Porter testified before the Board and after observing his demeanour, the Board finds he was not a credible witness. It is the decision of the Board that Gordon Porter violated the provisions of the Labour Act by intimidating and coercing Jordan MacAusland and Linda MacAusland with a view to encouraging their membership in CAW and discouraging them from remaining as members of UFCW. The evidence of the MacAuslands leaves the Board with no other conclusion. If employees did not voluntarily wish to be a part of CAW, there were always the strong arm tactics of Gordon Porter available. In fact, Gordon Porter was apparently so concerned about his conduct that he contacted a lawyer in regard to same. Employees seeing the manner in which the MacAuslands were being treated would not voluntarily subject themselves to the same type of treatment. Thus, their actions could only be involuntary and intimidation and coercion come into play.

22. The Board has concluded that Gordon Porter was acting on behalf of CAW. Mr. Porter acted on behalf of CAW in having cards and petitions signed. He acted with the knowledge of CAW and its resources. CAW cannot now escape sanction by stating the employee in question was not acting on behalf of CAW. CAW cannot pick and choose which times the employees represent the interests of CAW, for to allow it to do this, would in fact be permitting these individuals to use whatever tactics or methodology they desire and still allow CAW to escape responsibility for their actions by stating the employees were not acting on its behalf at that particular point in time.

23. The intimidation and coercion that occurred at the plant was widespread and took place over a considerable period of time. CAW knew or ought to have known about the events that were occurring. Police were called into the dispute. Obviously, no one saw fit to try and have such occurrences halted. On the facts of this case, the Board can make no distinction between CAW and those people who were its main proponents in the plant, and in particular Gordon Porter. Therefore, the Board finds that CAW directly or indirectly used intimidation or coercion on the employees of Cavendish Farms with a view to encouraging them to become members of CAW and in addition, discouraging them from remaining members of UFCW. No employee in his or her right mind would support UFCW in light of the treatment others advocating similar views were receiving.

24. A final comment that lends more support to the finding of the Board that the employees at Cavendish Farms were intimidated or coerced, concerns a comment made to the Board on October 15, 1988 by Counsel for CAW which was:

"Madam Chairman:

If this Board accedes to the demands of the incumbent union and forces negotiations with an undemocratic, disintegrating union, that these people don't want to represent them, I shudder to think of the consequences."  
[emphasis added]

The Board could presume the foregoing comment refers to the possibility of a wildcat strike, which had been mentioned to the Board previously. This Board will not be intimidated in any fashion. When veiled threats or innuendoes are made to the Board, it is likely that such threats were undoubtedly made to the employees as well.

25. The Board hopes conduct similar to that which has been related to the Board in this case will not re-occur in this province. The Board cannot overemphasize that harmonious labour relations should be attained in this province. That is not possible when there is conduct, such as has occurred in this case. The fact that employees were seeking other employment due to the manner in which they were treated does not sit well with the Board. People should be free to express their views without fear for their safety. When employees are unable to do so because of the actions of a union or a person or persons acting on behalf of a union, someone had better be prepared to live with the consequences. Here the Board finds that CAW or the people acting on its behalf, had crossed over the line from advocating a position to one of strong arm tactics, namely, intimidation and coercion.

26. For the foregoing reasons, the Board has determined CAW violated sub-section 9(2)(e) of the Labour Act. Section 10(3) of the Labour Act is the provision that empowers the Board to impose a remedy. The relevant part of the section states as follows:

"10(3) If the chief executive officer or other officer appointed by him, as the case may be, is unable to effect a settlement of the matter complained of, the board shall conduct a hearing on the complaint, and, if the board is satisfied that an employer, employers' organization, trade union or other person is committing or has committed an act prohibited by section 9, the board, shall, by order, make such award, give such direction, or take such other action as the board considers just and necessary in the circumstances and, without restricting the generality of the foregoing, may, by such order or subsequent order,

(a) direct the employer, employers' organization, trade union or other person to cease doing the act and to rectify in such manner as the board considers just any violation of section 9;

(b) direct an employer to pay to an employee a sum equal to the wages, salary or other remuneration lost by the employee by reason of the employer's violation of section 9;

(c) direct an employer to reinstate an employee in his employ at such date as in

the opinion of the board is just and proper in the circumstances in the position that the employee would have held but for a suspension, transfer, refusal to transfer, lay off, discharge or change of status of the employee done or made by the employer contrary to section 9;

(d) direct an employer to employ a person at such date as in the opinion of the board is just and proper in the circumstances in the position that the person would have held but for the refusal of such employer to employ such person contrary to section 9."

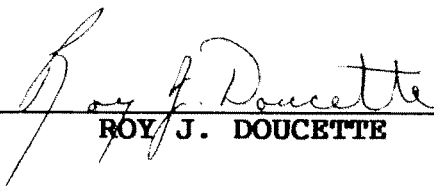
A review of the foregoing provision clearly indicates the Board can make such order as it believes "just and necessary". The Board has concluded that an order directing CAW, its officials, officers, employees, agents or other persons acting on its behalf to cease such conduct, is warranted and is so ordered.

27. In addition, while an extraordinary remedy, in order that the labour climate at Cavendish Farms stabilize, the Board directs and so orders that UFCW have an uninterrupted period of time in which to utilize the certification rights it has previously acquired in regard to the employees of Cavendish Farms. 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, the employees and the union representing the employees need stability and the Board feels this period of time should accomplish that stability.

28. Having stated the foregoing, the Board has concluded that CAW is guilty of an Unfair Labour Practice and has imposed a remedy it believes appropriate, just and necessary.

29. In accordance with Section 10(4) of the Labour Act, the Board directs that service of this decision on the parties 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 this 1st day of March, 1989 and issued under the hand of its Chief Executive Officer.

  
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ROY J. DOUCETTE

**PANEL:**

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