



GOVERNMENT OF PRINCE EDWARD ISLAND  
LABOUR RELATIONS BOARD

M. Lynn Murray, B.B.A., LL.B  
Chairman

DEPARTMENT OF LABOUR  
P.O. BOX 2000  
CHARLOTTETOWN  
PRINCE EDWARD ISLAND  
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Roy J. Doucette  
Chief Executive Officer

D E C I S I O N

RE: Prehearing Vote at Cavendish Farms and Garden Province Meats  
(1985) Inc.

BETWEEN:

NATIONAL AUTOMOBILE AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS  
UNION OF CANADA (CAW-CANADA), CANADIAN AUTO WORKERS

APPLICANT

AND:

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

INTERVENORS

Counsel for the Applicant - David W. Hooley

Counsel for the Intervenors - Eugene P. Rossiter

1. The matter currently before the Labour Relations Board (hereinafter referred to as the "Board") involves a request by the Applicant (hereinafter referred to as "CAW-Canada) for Prehearing Votes at Cavendish Farms and Garden Province Meats (1985) Inc.
2. There has been a lengthy history to the matters currently before the Board, involving CAW-Canada and the Intervenors (hereinafter referred to as "UFCW"). On May 8, 1987 CAW-Canada filed an Application for Certification with the Board involving the employees of Garden Province Meats (1985) Inc. An Application for Certification was filed by CAW-Canada on June 11, 1987 involving the employees of Cavendish Farms. Neither of these applications requested a Prehearing Vote.
3. On October 15, 1988 the Board heard CAW-Canada formally request permission to amend the Certification Applications referred to aforesaid to include a request for a Prehearing Vote. At that time the Board also heard argument on one other preliminary matter unrelated to the issue of a Prehearing Vote. The Board requested written submissions on the issue as to whether or not a Prehearing Vote should be ordered; and those submissions, together with supporting authorities were received by the Board in the case of UFCW on October 19, 1988 and in the case of CAW-Canada on October 21, 1988.
4. The Board rendered a decision on October 25, 1988 with respect to the request for amendment of the two Certification Applications. The Board ruled it would permit CAW-Canada to amend the Certification Applications referred to permit aforesaid to include a request for a Prehearing Vote at each of the two plants; namely, Cavendish Farms and Garden Province Meats (1985) Inc. on the condition that CAW-Canada file a document with the Board, sworn to by the appropriate officials of CAW-Canada. The Board, however, did not make a determination as to whether or not it would order a Prehearing Vote at either or both of the two plants in question, as it felt that the proper documentation had to be before the Board before such a ruling could be made.

5. On October 28, 1988 CAW-Canada did file documents with the Board, duly sworn to by the appropriate authorities, requesting the amendment. The Board has determined that these documents are in proper form and do in fact comply with the legislative provisions of the Labour Act R.S.P.E.I. 1974, Cap. L-1 and the Regulations made pursuant thereto.

6. Since the date of the Board decision dealing with this matter on October 25, 1988, the Board has received correspondence from the solicitors representing CAW-Canada requesting the Board to order Prehearing votes at both plants. This correspondence is dated October 28, 1988; November 1, 1988; November 7, 1988; and, most recently, November 18, 1988. The Board wishes to state that it is entirely inappropriate for correspondence to be forwarded to it requesting the Board deal with a matter that is only three weeks old. The Board has taken the matter under advisement and will render its decision in due course. While the Board recognizes that the parties are anxious to have certain matters dealt with, the Board wishes to emphasize it is cognizant of the duties bestowed upon it by the Legislature.

7. The relevant provision of the Labour Act, supra which deals with Prehearing Votes is Section 13 which states as follows:

13.(1) Upon an application for certification the applicant trade union may request that a prehearing representation vote be taken whereupon the Board may direct that a representation vote or votes be taken whereupon the Board shall determine the list of employees eligible to vote.

(2) A representation vote taken under this section shall have the same effect as a representation vote taken by the Board pursuant to section 12."

8. The Board has reviewed the submissions made by UFCW and those made by CAW-Canada. While there have been allegations made by UFCW that there has been intimidation and coercion of the employees at both plants; namely, Cavendish Farms and Garden Province Meats (1985) Inc.; the Board has not made any decision regarding those allegations.

9. The allegations dealing with this issue were made during the hearings held on July 4 and continued on July 7, August 9, August 10, August 11, August 13 and September 10, 1988. By agreement the evidence of those hearings is to form part of the record of the Certification Applications dealing with Cavendish Farms and Garden Province Meats (1985) Inc. In the previous Board decision of October 11, 1988 dealing with the withdrawal of the previously filed Applications, the Board has clearly indicated it had not made any determination on the issues of coercion and intimidation when it stated at Praragraph 19:

"Although the issues of coercion and intimidation were addressed, it is unnecessary for the Board to rule on these issues at this point in time."

10. The Board has determined that until all issues raised have been fully addressed and the Board is satisfied that any vote ordered reflects the true wishes of the employees at the two plants in question, no vote will be ordered. As the hearing has not been concluded, and both parties have yet to conclude their respective cases, the Board feels it would be premature to make any determination on any of the issues raised.

11. For the foregoing reasons, the Board will not order a Prehearing Vote at either Cavendish Farms or Garden Province Meats (1985) Inc. This, however, is not to be taken as meaning that the Board of its own volition will not order a representation vote under Section 12 of the Labour Act, supra. Subsection 12(3) of the Labour Act indicates the Board has the authority to order a representation vote, and it states:

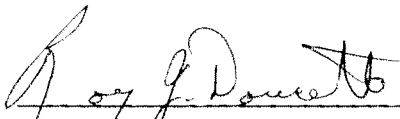
"For the purposes of subsections (1) and (2) and for the purpose of determining whether a majority of the employees in the unit wish the applicant trade union to be certified as bargaining agent of such employees, the board shall,

(a) make, or cause to be made, such examination of records or other inquiries and hold such hearings as it deems necessary;

(b) take such other steps as it deems appropriate to determine the wishes of the employees in the unit as to the selection of a bargaining agent to act on their behalf including, whenever the board deems it necessary, the taking of a representation vote or votes of such employees."

12. It is apparent from the foregoing that the Board has the authority to so order a vote of its own volition, and it will have no hesitation in so ordering if it determines it necessary to do so.

This Decision was made by the Labour Relations Board on November 22, 1988 and issued under the hand of its Chief Executive Officer.

  
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ROY J. DOUCETTE  
CHIEF EXECUTIVE OFFICER

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