



GOVERNMENT OF PRINCE EDWARD ISLAND  
LABOUR RELATIONS BOARD

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

Roy J. Doucette  
Chief Executive Officer

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

DECISION

RE: AMENDMENT OF CERTIFICATION APPLICATION TO PERMIT PRE-HEARING VOTE:

AND RE: WHETHER OR NOT UNFAIR LABOUR PRACTICE COMPLAINTS SHOULD BE DEALT WITH PRIOR TO THE CERTIFICATION APPLICATIONS.

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' INTERNATIONAL UNION

INTERVENORS

COUNSEL FOR THE APPLICANT - DAVID W. HOOLEY  
COUNSEL FOR THE INTERVENORS - EUGENE P. ROSSITER

1. On October 11, 1988, the Labour Relations Board (hereinafter referred to as the "Board") made a decision with regard to the Applications for Certification filed on June 11, 1987 in respect to Cavendish Farms and on May 8, 1987 with respect to Garden Province Meats (1985) Inc. by the National Automobile, Aerospace and Agricultural Implement Workers' Union of Canada, (CAW-Canada), Canadian Auto Workers (hereinafter referred to as "CAW-Canada"). At paragraph 24 of that decision, the Board stated in part:

"For the reasons stated herein, the Board will not permit the withdrawal of the Old Applications and thus will proceed to hear the Old Applications that were filed in 1987 with respect to both Cavendish Farms and Garden Province Meats (1985) Inc.

2. On October 15, 1988, the Board convened a hearing to deal with these matters. At that time CAW-Canada requested the consent of the Board pursuant to Section 11 of the Labour Act, R.S.P.E.I. 1974, to proceed with the Application

for Certification filed on June 11, 1987 dealing with Cavendish Farms. Counsel for United Food and Commercial Workers' Union, Local 1252 (In Trusteeship) and United Food and Commercial Workers International Union (hereinafter referred to as "UFCW") did not object to this request. As a result, the Board granted consent to CAW-Canada to proceed with Application for Certification filed on June 11, 1987 dealing with Cavendish Farms.

3. The applications dealing with Cavendish Farms and Garden Province Meats (1985) Inc. referred to herein did not indicate a Pre-hearing Vote was requested and at the Board hearing on October 15, 1988, Counsel for CAW-Canada requested orally that the Board permit an amendment to the two applications to include a request for a Pre-hearing Vote and made reference to a previous letter. Counsel for UFCW submitted that as an application to the Board is made by virtue of a sworn statement, thus, any amendment to that document must also be contained in a sworn statement.

4. The Board has reviewed the relevant legislation and reiterates the following provisions:

Section 26 of the Regulations states:

"An application, reply, intervention complaint, statement of desire to make representation or notice may be amended before or at the hearing by leave of the Board on such terms and conditions as the Board thinks advisable."

Subsection 2(1) of the Regulations states:

"2(1) Every proceeding before the Board shall be commenced by the filing of an application verified by statutory declaration and made in accordance with these regulations."

Subsection 2(2)(d) of the Regulations indicates:

"2(2) An application to the Board or any notice may be signed, if it is made, given or entered into

(d) by a trade union or employers' organization, by the president and secretary or by any two officers thereof, or by any person authorized for such purpose by resolution duly passed at a meeting of the trade union or employers' organization."

5. Section 26 of the Regulations gives to the Board authority to permit an amendment on such terms and conditions as the Board thinks advisable. In light thereof, and considering the circumstances of this particular situation, the Board will grant leave to CAW-Canada to amend its Certification Applications to request a Pre-hearing Vote in each of the applications referred to herein, on the condition that CAW-Canada file with the Board, within two (2) weeks of the date of this decision, a document sworn to by the appropriate individuals requesting the amendment.

6. The second issue before this Board, concerns which matters the Board should hear first, namely, the Applications for Certification filed by CAW-Canada

dealing with the employees of Cavendish Farms and Garden Province Meats (1985) Inc., or the Unfair Labour Practice Complaints filed by UFCW against Cavendish Farms and Garden Province Meats (1985) Inc. Both Counsel agreed that this was a preliminary point the Board must deal with prior to hearing the merits of any Certification Applications.

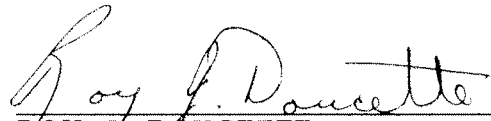
7. UFCW argued that the Unfair Labour Practice Complaints should be dealt with prior to the Board dealing with any Applications for Certification. It was submitted that if this did not, in fact, take place, a certification hearing might result in the Unfair Labour Practice Complaints becoming academic. On the other hand, CAW-Canada advanced the argument that the representation issue had to be resolved first and it was argued that this was in accordance with the wishes of the employees at both plants.

8. The Board notes that it has not dealt with the merits of any Certification Application to date, nor has it dealt with any Unfair Labour Practice Complaint to date. No authorities were submitted to the Board on the issue of whether the Board should hear the Unfair Labour Practice Complaints or the Applications for Certification first, and the Board was unable to find any law on this issue.

9. After hearing the submissions of CAW-Canada and UFCW on this issue, the Board has decided that the Unfair Labour Practice Complaints will be heard prior to any Application for Certification being dealt with on its merits. These Unfair Labour Practice Complaints will be heard immediately to be followed thereafter by the Applications for Certification.

10. Finally, although the parties, by written submissions, addressed the issue of the Board ordering a Pre-hearing Vote, the Board does not feel it necessary to deal with this issue until such time as the appropriate documentation is filed with the Board in accordance with the Board ruling contained herein.

THIS DECISION was made by the Labour Relations Board and ISSUED under the hand of its Chief Executive Officer this 25th day of October, A.D. 1988.

  
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ROY J. DOUCETTE  
Chief Executive Officer

M. Lynn Murray, Chairman  
Gerry Doyle, Member  
Betty MacFadyen, Member