

Application No 88-006



**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

**IN THE MATTER OF: AN UNFAIR LABOUR PRACTICE COMPLAINT - DISMISSAL
OR DISCHARGE**

BETWEEN:

CONSTRUCTION AND GENERAL LABOURERS'
UNION, LOCAL 1079A

COMPLAINANT

AND:

WEVEA CANADA LIMITED PARTNERSHIP

RESPONDENT

COUNSEL FOR THE COMPLAINANT - J. GORDON MacKAY

COUNSEL FOR THE RESPONDENT - EUGENE P. ROSSITER

DECISION

1. Application No. 88-006 involves an Unfair Labour Practice Complaint filed by the Complainant with the Labour Relations Board (hereinafter referred to as the Board) on September 23, 1988. It alleged a violation of Subsection 9(1)(c) of the Labour Act, R.S.P.E.I. 1974, Cap. L-1 and the concise statement of the complaints are restated below:

"(a) George Sturgess was fired by his Employer on September 22, 1988 at 3:00 p.m. The reason given by this Employer was 'Absenteeism'.

(b) Marc Powell, General Manager, called a meeting of all Floor Employees on September 22, 1988. He asked the employees about the Union, and told them that it was not a good idea. He suggested that they form a Floorworkers' Association. He stated if the Union got in, the partners of the business would close the doors. He stated that he wants the employees to sign a paper, by Monday, stating that they would become members of the Floorworkers' Association. Marc also stated that there are certain employees within the Bargaining Unit who would not be allowed to be members of the Union (eg: an employee who is a machinist

apprentice will be returning to training school)."

2. On October 5, 1988, the Respondent through its counsel filed a Reply advising the Board that the employee, George Sturgess, was dismissed for cause in that he was absent for 162.75 hours between January 1, 1988 and September 22, 1988.

3. Subsection 9(1)(c) of the Labour Act, supra states as follows:

"9. (1) No employer, employers' organization or an agent or any other person acting on behalf of an employer or employers' organization shall

(c) suspend, transfer, refuse to transfer, lay off, discharge or change the status of an employee or use coercion, intimidation, threats or undue influence, or otherwise discriminate against any employee in regard to employment or any term or condition of employment, because the employee is a member or officer of a trade union or has applied for membership in a trade union;"

4. The Chief Executive Officer of the Board investigated the Complaint and filed his report with the Board as is required by statute. A hearing was then convened on November 10, 1988 to deal with this matter.

5. Pursuant to Subsection 10(5) of the Labour Act, supra, the onus lies with the employer to demonstrate to the Board that the dismissal or discharge was for "good and sufficient cause and not in violation of Section 9".

6. The Employer did call evidence aimed at demonstrating that George Sturgess was dismissed for cause. Evidence was also adduced by the Union on this point. One of the documents adduced by the Employer was entitled "Wevea Canada Limited Partnership - Conditions of Employment" and it was purportedly signed by Mr. Sturgess. It went into effect in April of 1988 and the relevant section contained therein which deals with Absenteeism states:

Absenteeism

Absenteeism is a severe nuisance factor to production. Employees are required to "phone in" if they are going to be more than 30 minutes or if they are going to be absent. This allows management to reschedule work. Consistent absenteeism without good cause can result in disciplinary action or dismissal. In any event loss of pay will occur.

**** LEAVING EARLY WITHOUT AUTHORIZATION**

7. Marc Powell, General Manager of the Respondent testified that the employees take their vacation prior to Christmas of each year, said vacation to end on January 1st. The evidence indicated that the plant shuts down and all employees take their vacation at the same time. This point was not refuted and thus stands as uncontradicted.

8. Gerard Anthony Dailey, General Foreman for the Employer also testified he had advised Mr. Sturgess on a number of occasions that his absenteeism was causing a problem. He also testified that Mr. Sturgess missed considerable time from work in 1987.

9. George Sturgess testified and indicated that it was possible that he could have been warned more than a couple of times. He also indicated that a "change of atmosphere would get me to go to work for two weeks [without missing time]" and he "didn't like doing laps all the time."

10. Gary St. Clair, another employee also testified. He indicated that all employees were aware of the fact that the company did not want employees to be absent from work.

11. The Board received documents into evidence which showed George Sturgess was absent from work for 179.00 hours in 1987 excluding storm days and holidays (Exhibit R-12) and 162.75 hours between January 1, 1988 and September 21, 1988 (Exhibit R-7). This latter figure does not include vacation time as the uncontradicted evidence indicates that it had not yet occurred for the 1988 year.

12. After reviewing the evidence adduced regarding the dismissal of George Sturgess the Board is satisfied that Mr. Sturgess was dismissed for "good and sufficient cause" and thus the Respondent has satisfied the onus placed on it by virtue of Subsection 10(5) of the Labour Act, supra. The evidence clearly demonstrates Mr. Sturgess was absent a considerable amount of time in 1987 and 1988. The Board also finds Mr. Sturgess knew that he was not to be absent from work. The Board finds Mr. Sturgess was warned and in fact did not receive a pay increase until he had completed a two week period of work with no absenteeism. The Board also finds that the evidence adduced indicated the Respondent was fairly flexible with time off, provided that the employee advised that he would not be able to attend at work. Even on this, Mr. Sturgess did not comply and he did not advise the company on a number of occasions that he would not be at work.

13. For the reasons noted aforesaid, the Board finds there was no Unfair Labour Practice committed by the Respondent and thus the Board will not grant the relief requested by the Applicant.

14. Turning to the second Unfair Labour Practice Complaint, namely the alleged intimidation of the employees, this point was not addressed in the same manner as the dismissal of George Sturgess was. However, from the evidence that was adduced on this point the Board will attempt to deal with this issue.

15. Marc Powell testified that he had a meeting with two employees on September 6, 1988, approximately two weeks prior to any Application for Certification being filed. The employees he met with were George Sturgess and Gary St. Clair. Two documents were submitted to the Board on what was discussed, namely, Exhibit A-2 being a handwritten document entitled "Proposal - Wevea Canada Recreation Fund" and "Policy 89 - Proposal", and Exhibit R-4 being a typed document entitled "Wevea Canada Limited Partnership Company Policy - October 31, 1988 - October 31, 1989 - Proposal". The two documents are somewhat different and in fact were tendered to demonstrate that Conditions of Employment were being discussed between the employees and the employer prior to any Application for Certification being filed as it was in this case (Application No. 88-007).

16. After the meeting on September 6, 1988, a document was prepared by the Respondent and circulated to the employees. This in fact occurred on or about September 21, or September 22, 1988. The document was tendered as Exhibit R-5 and it stated:

"EMPLOYEE ASSOCIATION OF WEVEA CANADA LIMITED PARTNERSHIP

We the undersigned employees are the Employee Association and have elected two representatives to meet and discuss the policy for 1989, which will be in effect from October 31, 1988 to October 31, 1989 with the management of Wevea Canada Limited Partnership.

I Bernadette Walker for Wevea Canada Limited Partnership agree to negotiate in good faith with the representatives of the Employee Association.

I Marc Powell, General Manager, agree to settle any conflict with Management and Employee Association."

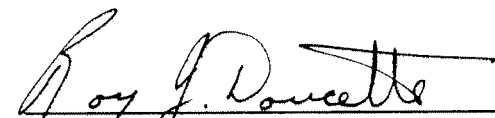
17. A joint affidavit of Bernadette Walker and Yvonne Vanowerkerk was filed with the Board (Exhibit R-10) which indicated Ms. Walker and Ms. Vanowerkerk received instructions to prepare and circulate the document referred to in paragraph 16 hereof on September 13, 1988 but it was not, in fact, circulated until September 22, 1988.

18. While at first glance it might appear that the circulation of the document might in fact be construed as interference in the formation of a union, the Board is satisfied the circumstances have been explained and the Board finds there was no Unfair Labour Practice committed by the Respondent.

19. Further, the Board also notes that there was no Unfair Labour Practice Complaint filed dealing with the circulation of Exhibit R-5 and/or intimidation, but rather the Unfair Labour Practice Complaint alleged is a meeting on September 22, 1988 in violation of Subsection 9(1)(c) of the Labour Act, supra. Subsection 9(1)(c) of the Labour Act, supra does not deal with intimidation. The meeting referred to in the Unfair Labour Practice Complaint was denied and no evidence was led on it.

20. For the reasons noted aforesaid, the Board dismisses the Unfair Labour Practice Complaint filed by the Applicant on September 23, 1988.

This decision of the Labour Relations Board made this 2nd day of December, A.D. 1988 and issued under the hand of its Chief Executive Officer.



ROY J. DOUCETTE
CHIEF EXECUTIVE OFFICER

PANEL:

M. Lynn Murray - Chairman
Ted Crockett - Member
Harry Snow - Member