



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
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D E C I S I O N

RE: AN UNFAIR LABOUR PRACTICE COMPLAINT - FAILURE TO NEGOTIATE
BETWEEN: UNITED FOOD AND COMMERCIAL WORKERS' INTERNATIONAL UNION COMPLAINANT;
AND: CENTRAL FARMERS' COOPERATIVE ASSOCIATION LIMITED RESPONDENT.

COUNSEL FOR THE COMPLAINANT: PATRICK A. AYLWARD
COUNSEL FOR THE RESPONDENT: PAUL D. MICHAEL

1. On October 20, 1988, an Unfair Labour Practice Complaint was filed with the Board by United Food and Commercial Workers' International Union (hereinafter referred to as UFCW) alleging Central Farmers' Cooperative Association Limited (hereinafter referred to as Co-op) violated subsection 1 (e) of the Labour Act R.S.P.E.I. 1974, Cap. L-1 in that the Co-op had refused to negotiate a collective agreement.

2. A reply was filed by Co-op with the Board on November 8, 1988; and the Chief Executive Officer of the Board inquired into the Complaint as required by section 10 of the Labour Act. He was unable to effect a settlement, and his report was accordingly filed with the Board on December 2, 1988. He inquired into a violation of subsection 9(1)(e) of the Labour Act.

3. While the Complaint refers to subsection 1(e) of the Labour Act, and there is no such subsection contained therein, the Board believes that the Complaint should have referred to subsection 9(1)(e) of the Labour Act. That particular section reads 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

(e) fail or refuse to bargain collectively in accordance with this part;

Co-op conceded that it had failed to bargain with UFCW. That particular violation refers to subsection 9(1)(e) of the Labour Act. The Board thus holds that the omission of the number "9" is a technical irregularity, and the Complaint is not invalid because of the omission. The Board relies on Section 47 of the Labour Act and Section 27 of Regulations made thereunder to support this conclusion.

4. The relevant portion of the Complaint admitted by Co-op is contained in paragraph 4 thereof and it reads as follows:

"Central Farmers' Cooperative Association refuses to negotiate a Collective Agreement with the Certified Bargaining Agent, United Food and Commercial Workers' Union, Local 1252 (In Trusteeship) and United Food and Commercial Workers' International Union, for the employees described in Article II of the Collective Agreement between Central Farmers' Cooperative Association Limited and UFCW Local 1252 and International Union in effect until September 30, 1988 and thereafter as provided therein."

5. In light of the foregoing, the Board has concluded that Co-op has committed an act prohibited by section 9 of the Labour Act; namely, it refused to bargain collectively with UFCW, the certified bargaining agent. The Board is fully cognizant of the fact that there is a competing union which has requested this Board to certify it as bargaining agent for the employees of Co-op; and undoubtedly, this Complaint would most likely not have arisen had this state of affairs not existed. Be that as it may, UFCW is and continues to be the certified bargaining agent for the employees of Co-op until such time as this Board otherwise determines.

6. The Labour Act imposes certain obligations on both employers and unions; and in order that harmonious labour relations in the Province are maintained, the Board must ensure that those obligations are fulfilled. The Board emphasizes that one of the most fundamental rights a union acquires when it is certified is the right to be the exclusive bargaining agent for the employees it represents. The Board cannot condone, nor will it sanction any interference with such lawfully obtained rights.

7. The Board must now address itself to the appropriate remedy to be imposed. UFCW has requested various relief in its Complaint; namely:

- (a) an Order directing the Respondent to negotiate in good faith with the Complainant immediately;
- (b) an Award against the Respondent in favour of the Complainant;
- (c) an Order against the Respondent in favour of the Complainant directing that any financial package or negotiations entered into at any time in the future replacing the Collective Agreement in existence between the Complainant(s) and the Respondent expiring September 30, 1988, be deemed to be retroactive with interest accumulating at the rate of 20% per annum;
- (d) the Complainant's costs on the solicitor-client basis against the Respondent.

8. The Board's authority to impose a remedy is contained in Subsection 10(3) of the Labour Act. A review of that provision leads the Board to the conclusion that it has the jurisdiction to impose a variety of remedies including any direction or action that the "board considers just and necessary in the circumstances."

9. The Board has no difficulty in arriving at a decision that Co-op should be ordered to negotiate with UFCW in good faith, and the Board so orders. These negotiations shall commence as soon as possible, and in no event shall those negotiations commence later than seven days from receipt of this Order.

10. A decision on the other relief requested has not been as simplistic as that noted in Paragraph 9 hereof. The Board will not make an Order against Co-op in the nature of solicitor-client costs. There is nothing explicitly or implicitly stated in the legislation which would provide for such a remedy. The Board can take notice of the fact that such a practice has never been followed previously by this Board or any other Board or administrative tribunal in this Province. The Board has reviewed the authorities submitted and has determined that such a remedy should be imposed only in extraordinary circumstances. The Board is not satisfied it has the jurisdiction to impose such a remedy and even if it had the jurisdiction, the Board does not believe that the particular facts of this case would warrant same.

11. On the other hand, while any Order imposed by this Board should not be punitive in nature, neither should it ignore the benefits or detriments that may have accrued to either parties. Common sense would dictate that the Board must ensure that a party not benefit from its violation. The clear wording of subsection 10(3) of the Labour Act grants authority to the Board to make any order it considers just and necessary. That, by implication, must be construed to mean that the Board can impose an award or give direction to the parties to ensure that the party which has been wronged is compensated in whole or in part.

12. The Board will not order that Co-op pay to UFCW any sum of money per se. However, the Board believes that the employees of Co-op have suffered in that they have had no increase in wages since October, 1987, despite the fact that such should have occurred on or about September 30, 1988. Co-op argued that the Board did not have the jurisdiction to impose a term of the collective agreement. The Board does feel it has the authority to grant a remedy. This position is supported by the decision of the Honourable Chief Justice Norman H. Carruthers on January 30, 1986 in Perfection Foods Limited v. Retail Wholesale Dairy Workers' Union, Local 1515 (1986), 57 Nfld. & P.E.I. R. 147 (P.E.I.S.C.) where he stated at page 164:

"The pertinent provisions of the Prince Edward Island Labour Act are found in s. 10(3), supra. While the scope of these provisions may not be as broad as the concluding part of s. 189 of the Canada Labour Code, I am satisfied that they are broad enough to enable the Board, in the circumstances of this case, to make an order, the effect of which is to impose a term of an agreement upon the parties."

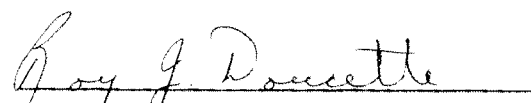
13. Because of the short period of time that has elapsed since the breach, the Board hopes the parties will be able to deal satisfactorily with the issue of retroactivity. However, if such is not possible, then on Application to the Board, the Board would consider the parties' representations on this issue. For the foregoing reasons, the Board declines to issue a compensatory order at this time, but remains seized of this case for such purposes.

14. Finally, the Board would like to express its appreciation to both Counsel for the professional manner in which they conducted themselves and the assistance they gave to the Board during this hearing.

15. In conclusion, the Board directs and orders Co-op and UFCW to commence negotiations as soon as possible and in any event within seven (7) days of the date of this Order.

16. The Board orders, in accordance with subsection 10(4) of the Labour Act, that service of this order on both Co-op and UFCW shall be by serving a copy thereof on the solicitors who represented the parties at the hearing.

THIS DECISION made by the Labour Relations Board and issued under the hand of its Chief Executive Officer on January 31, 1989.


Roy J. Doucette
Chief Executive Officer

PANEL:

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