



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

D E C I S I O N

RE: UNFAIR LABOUR PRACTICE COMPLAINT FILED OCTOBER 8, 1987 AND AMENDED
NOVEMBER 1, 1988 - INTERFERENCE IN REPRESENTATION OF EMPLOYEES IN TRADE UNION

BETWEEN: UNITED FOOD AND COMMERCIAL WORKERS UNION, LOCAL 1252 (IN TRUSTEESHIP) COMPLAINANT;

AND: GARDEN PROVINCE MEATS (1985) INC. RESPONDENT.

COUNSEL FOR COMPLAINANT - Eugene P. Rossiter
COUNSEL FOR RESPONDENT - William G. Lea, Q.C.

1. Application No. 88-017 is an Unfair Labour Practice Complaint filed with the Board by United Food and Commercial Workers Union, Local 1252 (In Trusteeship) (hereinafter referred to as UFCW). The Complaint alleges that Garden Province Meats (1985) Inc. (hereinafter referred to as Garden Province) committed a violation of Section 9(1)(b) of the Labour Act R.S.P.E.I. 1974, Cap. L-1.
2. A reply was filed by Garden Province; and, in accordance with Section 10 of the Labour Act, the Chief Executive Officer inquired into the Complaint and reported his endeavours to the Board. The Chief Executive Officer indicated he was unable to effect settlement, and, accordingly, a hearing was convened to deal with the matter.
3. At the hearing, counsel for UFCW sought to amend its Unfair Labour Practice Complaint to claim additional remedies. No objection was made on behalf of Garden Province; and, as a result, the Board granted leave for UFCW to file its Unfair Labour Practice Complaint, sworn to October 18, 1988.
4. The violation that Garden Province is alleged to have committed is as outlined in Paragraph 1 of the Unfair Labour Practice Complaint and reproduced below:

"The Respondent participated or interfered with the administration of a trade union or representation of employees by a trade union or other labour organization by having discussions with a person who is neither an employee of the Respondent nor an employee or agent of the Complainant for the purpose of reaching an agreement with respect to the hours to be worked by employees of the Respondent pursuant to the then existing contract which is in effect until May 31, 1987, and thereafter provided therein."

5. The specifics of the violation are more particularly outlined in Paragraph 4 of the Complaint and revolve around a meeting that occurred to settle a grievance filed on behalf of the employees of Garden Province. It is alleged that Garden Province or its agents met with one James MacDonald in regard to the grievance at a time when Mr. MacDonald was not in the employ of UFCW and in fact was in the employ of Canadian Auto Workers, a competing union which was seeking to be certified as bargaining agent for the employees of Garden Province.

6. The reply filed by Garden Province specifically denied paragraphs 1, 2 and 4 of the Unfair Labour Practice Complaint; however, at the hearing, Counsel for the parties placed certain facts before the Board, the relevant ones of which are outlined below:

- (i) Frank Gillan was the person responsible for labour relations at Garden Province.
- (ii) A meeting took place on June 8, 1987 in regard to settling a grievance; and in attendance were Frank Gillan, Harold Snow, Ernie Coyle and James MacDonald.
- (iii) Garden Province knew on June 8, 1987 that James MacDonald was no longer affiliated with UFCW, and in fact was the business agent for CAW-Canada.
- (iv) Actual discussions occurred between Mr. MacDonald and Mr. Gillan at the meeting referred to aforesaid; and
- (v) No UFCW representative was advised of the meeting.

7. The complaint was made pursuant to subsection 9(1)(b) of the Labour Act, supra, which 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:

- (b) participate or interfere with the formation, selection or administration of a trade union or other labour organization or the representation of employees by a trade union or other labour organization; or contribute financial or other support to such trade union or labour organization;

8. The Board finds that Garden Province is an employer within the meaning of subsection 9(1) of the Labour Act, supra and finds that UFCW currently is the certified bargaining agent for the employees at Garden Province according to a previous order of this Board issued on September 7, 1956, which has not been revoked. Frank Gillan was an agent acting on behalf of Garden Province with its knowledge and consent. The Board finds that Mr. Gillan met with Mr. James MacDonald in regard to settling a grievance between the employees of Garden Province and Garden Province on or about June 8, 1987. However, at the time of those discussions, Mr. MacDonald was not employed by UFCW, and in fact was employed by CAW-Canada, another union which was vying for the membership of the employees of Garden Province. The Board finds that both Mr. Gillan and ~~Garden~~ Garden Province were aware of the fact that James MacDonald did not represent UFCW on the date the meeting occurred.

9. The Board finds that Mr. Gillan, as an agent of Garden Province, had no right and should not have met with Mr. MacDonald in regard to settling a grievance. UFCW was the certified bargaining agent for the employees at that plant; and, while Mr. MacDonald had represented UFCW previously in like matters, he had switched his allegiance to a competing union, and Garden Province was fully aware of this. It was also admitted that no UFCW representative was advised of this meeting. Garden Province knew or should have known

of the inter-union dispute that was occurring in various parts of eastern Canada and should have conducted itself accordingly.

10. The Board finds that by meeting and having discussions with James MacDonald, Mr. Gillan, and thus Garden Province, interfered in the representation of employees by a trade union and had a complete disregard for a previous Board order certifying UFCW as the exclusive bargaining agent for its employees.

11. After considering the evidence, and the admissions made at the hearing into this matter, the Board finds that Garden Province has committed an act contrary to subsection 9 (1) (b) of the Labour Act, supra and the Board must now determine the appropriate remedy.

12. Subsection 10(3) of the Labour Act, supra, outlines the remedies the Board can impose and it states:

(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 the 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.

13. Thus it is evident, the Board does have a wide variety of powers if it finds, as it has in this case, that an act prohibited by Section 9 of the Labour Act, supra has been committed.

14. In the Amended Unfair Labour Practice Complaint, UFCW has requested various remedies which are outlined below:

- (a) Instruction to the Respondent not to have any dealings with James MacDonald and/or any other Canadian Auto Workers representative;
- (b) An Award against the Respondent in favour of the Complainant;
- (c) An Order providing that any pay increase to the employees pursuant to any new contract negotiated and intended to replace the contract expiring on May 31, 1987, be retroactive, with interest thereon at the rate of 20% per annum;
- (d) Costs in favour of the Complainant on solicitor-client basis against the Respondent.

15. The Board orders that Garden Province, including its agents and persons acting on its behalf, have no dealings with James MacDonald or any other representative of Canadian Auto Workers in regard to any matters that fall into the realm of being the right of the certified bargaining agent until otherwise stated by this Board or a panel thereof. That means UFCW is the exclusive bargaining agent, and any matters that it is responsible for are not to be discussed with any other trade union or representative thereof. The Board stresses that it cannot and will not permit such interference with labour relations in this province.

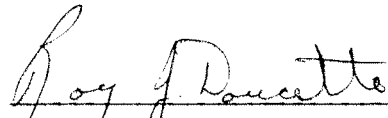
16. The Board feels that, while an award is not appropriate at this time, if the facts warranted such in the future, the Board would give consideration to this type of remedy if it deemed it just. The Board cannot overemphasize that it must promote harmonious industrial relations in the province which by statute includes the upholding of a trade union's lawfully obtained exclusive certified bargaining rights.

17. The Board does not feel that a retroactive pay increase has any bearing on this particular complaint and thus will not order such a remedy.

18. Finally, on the issue of costs, for the reasons noted in the Decision involving Application No. 88-016, the Board will not order same.

19. In accordance with Sub-section 10(4) of the Labour Act, the Board orders service of this order on both Garden Province and UFCW shall be by personal service of 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 this 31st day of January, A.D. 1989.



Roy J. Doucette
Chief Executive Officer

PANEL:

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