



**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
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D E C I S I O N

BETWEEN: UNITED FOOD AND COMMERCIAL WORKERS, LOCAL 1252 COMPLAINANT
AND: AMALGAMATED DAIRIES LIMITED RESPONDENT
COUNSEL FOR THE COMPLAINANT: EUGENE P. ROSSITER
APPEARING FOR THE RESPONDENT: JOHN CORBETT

This action was initiated by the filing of an Unfair Labour Practice Complaint (Form 11) dated November 22, 1989 and filed with the P.E.I. Labour Relations Board on November 24, 1989. The provisions of the Labour Act have been complied with including an investigation and report by the Chief Executive Officer which concluded that no settlement could be effected.

At the hearing held in this matter, the Complainant was represented by Eugene P. Rossiter while the Respondent was represented by John Corbett. The provisions of s. 10 (5) of the Labour Act R.S.P.E.I. Cap. L-1, were read into evidence by the chairman of the panel. As it was agreed by both parties that three (3) people were "laid-off" effective November 26, 1989, the onus then fell upon the Respondent to establish that the lay-offs were "for good and sufficient reason and not in violation of Section 9" of the Labour Act.

The evidence disclosed that the Applicant union was certified by the Board as sole bargaining agent for the employees of the Respondent in October of 1989 and that Notice to Bargain was delivered to the Respondent on October 31, 1989. On November 15, 1989, lay-off notices were given to Allan Gregory, Shirley Cleveland, and Delbert Jewell to take effect November 26, 1989.

Mr. Corbett testified that the reason for the lay-offs revolved around the fact that the milk production line was being physically moved from its previous location in Charlottetown to its new location in West Royalty. He stated this necessitated that the line cease production for a period of time and thus the need for fewer workers. Mr. Corbett stated that the lay-offs of the people in question were due either to the fact that the machines these people operated were non-operational for a period or to related work slowdowns. However, the evidence disclosed that other machine operators were not laid-off for the same period of time.

For the record, the Board would like to recognize that the evidence discloses that the lay-offs were undertaken after the union was certified and after Notice to Bargain was given by the union to the company. This would appear to be a violation, by the company, of subsection 21 (b) of the Labour Act as the union was not notified of

the lay-offs by the company, nor was its consent obtained. However, this issue is not the central issue before the Board although it is one factor which aided the Board in reaching its conclusion.

The central issue before the Board concerns the lay-offs of Ms. Cleveland, Mr. Gregory, and Mr. Jewell. While the Board recognizes that due to the change in plant location some lay-offs may well have been justified for business reasons, the Board must concern itself with the question "Why were these three people in particular laid off in the circumstances?"

The evidence disclosed that all three people were experienced and long-serving employees of the company. There was no indication that their work was anything but acceptable and the Board felt that the combination of their years of experience and knowledge of how to operate several machines and perform several functions made them very valuable employees.

As stated previously, the Board's duty in this matter is to decide whether the lay-off of these three employees was because of the union activity of these employees. The evidence disclosed that all three employees were instrumental in the formation of the union. The evidence also disclosed that management of the company was aware, to varying degrees, of each person's support for the union.

After weighing all the evidence placed before the Board, this Board has concluded that the lay-offs in this case constituted a violation of section 9 (1)(c) of the Labour Act. While the Board recognizes that some lay-offs may well have been justified from a business point of view, the Board can come to no other conclusion than that the decision to lay-off these 3 employees in particular carried very definite "anti-union" overtones and was designed by management to penalize these employees for their union activities. As is commonplace in such matters, the Board must weigh all evidence, direct and/or circumstantial, and draw conclusions and/or inferences regarding the issue at hand; in this case the motivation of management in the lay-off of these three individuals.

The Board has reached its conclusion based upon numerous factors and pieces of evidence which include the following:

1) Timing of Discharge

In this case the lay-offs took place only days after the union was certified and days after the union gave the company Notice to Bargain. Also, the lay-offs were announced days before dates for collective bargaining negotiations were proposed by the company. As well, the lay-offs took place shortly after a meeting was held between Mr. Corbett and all employees in which union and collective bargaining issues were the central theme and when Mr. Corbett was reportedly agitated regarding the recent certification action of the union.

All of the above factors certainly lead the Board to the conclusion that the layoffs were a reaction to union activity. Once again it must be recognized that a planned plant move was taking place at this same period of time; but for reasons that will be outlined below the Board feels that the lay-offs of the three individuals in question were undertaken for anti-union motives.

2) Manner of Discharge

In this case the lay-off notices were given by stapling the notices to the employees' time cards. The Board found this method of notification quite puzzling. There are only a few employees in this plant, and all are well known to all levels of management. Thus, the Board can see no reason why the employees were not personally advised of the lay-off by some level of management. Furthermore,

all three were long-time employees of the company and one would expect a greater degree of courtesy to such employees if it were a "normal" lay-off situation. Also, it should be noted that no evidence was called indicating that involved in the lay-off notices or subsequent talks with management were any of the three employees affected given information regarding the anticipated length of lay-off or assured that they would be re-hired when the new facility was fully functional.

The Board also finds it peculiar that, although any lay-off that might have been anticipated by management as a result of the move to the new location could have been forecast long before the actual move itself, management did not inform the employees of the lay-off until approximately 10 days prior to its taking effect and with no prior indication that such lay-offs were necessary. If these lay-offs were for legitimate business reasons, one could reasonably anticipate some prior discussion with the employees so as to minimize the impact of the lay-off.

All of the above seems rather strange behavior by management towards long-time, valuable, and apparently loyal employees. The Board feels all of this indicates something other than a "normal" temporary lay-off for lack of work. Also, it should be noted again that the company laid off these workers without seeking the consent of or even notifying the union recently certified as collective bargaining representative.

3) **Seniority**

As noted previously, all three laid-off employees were senior staff members of the company. All apparently had good work records and were valuable, as they knew the workings of the operation and could operate several machines in the production or could perform several functions within the operation. In the absence of any other factors, it would seem strange that these three people be singled out for lay-off while other employees, some with considerably less experience and seniority, were retained. It would seem logical that a business would make every effort to protect its senior and valuable employees from such lay-offs and only resort to such action as the last alternative. It does not appear as if management made any effort to provide these employees with alternate duties either within the plant or in other plants (as had taken place previously on occasion) so as to avoid the lay-off. The evidence disclosed all three could perform various tasks and the Board feels could well have been retained performing other functions.

Also, the Board considered that the decision to lay-off these three employees was an apparent violation of the working agreement filed as an exhibit in this matter (Exhibit Applicant - 1). The Board recognizes this agreement falls well short of a collective agreement although it is structured highly similarly to such an agreement. Nonetheless, the Board recognizes that the company used this working agreement as guidelines for effecting smooth day-to-day relations with employees and although this agreement may not have a binding, enforceable effect, the Board nonetheless finds management's blatant violation of the spirit of this agreement regarding seniority/lay-off as highly suspicious.

4) **Management Interference**

In order for the lay-offs to be anti-union motivated, there must be some evidence that management knew of the role played by the affected employees in supporting the union. The employees have testified that they each believe some level of management knew of their union support as their actions were consistent with union support. Mr. Gregory and Ms. Cleveland both raised monetary concerns with various

levels of management whether it be in regard to hourly rates of pay or retroactivity for wage increases. Mr. Jewell strongly objected to management when he learned that the rules regarding hours of work necessary to qualify for overtime wages were unilaterally altered by the company. Thus, management knew all three had concerns with management and it would not take much ingenuity to deduce such concerns could translate into union support. Also, Mr. Corbett testified that, although he and other managers did not discuss who supported a union, they did, nonetheless, discuss those who were known not to support the union. In a small plant such as this, it would not take much deduction to determine who in fact did support the union. Thus, it is not unreasonable to assume that management knew that these three employees were supporters of the newly formed union.

There is also other management interference in the union. Testimony disclosed that Claude Buote, a foreman, asked questions of workers to determine who had attended organizational meetings of the union. Testimony was also adduced indicating that Barry MacWilliams, a mid-level manager, intimated to Shirley Cleveland that if a union was formed, it might adversely affect retroactivity benefits accruing to the employees. Also, the meeting that Mr. Corbett had with the employees after the union vote is further evidence that management subtly tried to influence the formation of the union.

Dealing specifically with the lay-off of the 3 employees in question, there are 2 circumstances that greatly concern the Board. The first is the evidence of Mr. Gregory's which indicates that Barry MacWilliams approached him and intimated that if he dropped this unfair labour practice complaint, it was likely that he would be re-hired. Obviously, such action is not appropriate. The other circumstance again arises from the testimony of Mr. Gregory in which he states that Claude Buote stated to him, in reference to the lay-off, that, in effect, Mr. Corbett had a pick on him (Gregory), due presumably due to union activity.


The Board finds such management actions quite disturbing and supportive of the conclusion that the lay-offs of the 3 individuals were for anti-union purposes.

Based on all of the above, the Board unanimously finds that the lay-offs of Allan Gregory, Shirley Cleveland, and Delbert Jewell were designed to reflect these people's involvement in union activities and thus constitutes a violation of subsection 9 (1)(c) of the Labour Act.

As the Board has found a violation of subsection 9 (1)(c) of the Labour Act, the next issue is the matter of the appropriate award. As the Board has ruled that the lay-offs in question were not for good and sufficient business reasons, the Board finds that the three employees in question have been unlawfully laid-off from their jobs. In light of this, the Board orders that Allan Gregory, Shirley Cleveland and Delbert Jewell be reinstated to their previous positions with all benefits as were in place prior to the lay-off. This reinstatement is to take effect the date of this order. Furthermore, the Board orders that the Respondent reimburse these 3 employees for lost wages and benefits et cetera that normally would have accrued to them between November 26, 1989 (the date of the lay-off) and the date of re-instatement as ordered above. This reimbursement is to be based upon the rates of pay in effect for each employee as of November 26, 1989 and shall be calculated on the basis that each employee would have worked a 40 hour week in each week within this period. Calculations for any partial week shall be made on a pro rata basis. Also, consideration for any statutory holidays within this period must also be made by the Respondent. This Board also orders that the reimbursement for lost wages, referred to above, be completed within 10 days of the date of this decision.

The Board further orders that this decision be personally served upon Counsel for the Applicant and upon the Respondent by personally serving any representative of management of the Respondent.

THIS DECISION made by the Labour Relations Board and issued under the hand of its Chief Executive Officer on this second day of January, 1990.


Roy J. Doucette
Chief Executive Officer

PANEL:

Aidan Sheridan, Vice-Chairman
Judy Goodwin, Member
Jean-Marc Gallant, Member