

Application No. 91-025



**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

RE: SUCCESSOR TRADE UNION

BETWEEN:

UNITED FOOD AND COMMERCIAL WORKERS' LOCAL 864

APPLICANT

AND:

CAVENDISH FARMS

RESPONDENT

COUNSEL FOR THE APPLICANT:

EUGENE P. ROSSITER, Q.C.

THE RESPONDENT:

UNREPRESENTED & NOT APPEARING

D E C I S I O N

BACKGROUND OF APPLICATION:

1. On November 5, 1991, an application for successor trade union status was filed by the Applicant requesting a declaration that United Food & Commercial Workers, Local 864 has acquired the rights, privileges and duties of its predecessors United Food & Commercial Workers, Locals 1252 and 282P by reason of a merger, amalgamation or a transfer of jurisdiction.

2. The Chief Executive Officer sent notice of the Application to the Respondent on November 15, 1991 and scheduled December 6, 1991 as the terminal date. No documentation was filed by the Respondent within the required time frame.

3. The Labour Relations Board (hereinafter referred to as the "Board") composed of M. Lynn Murray as Chair, Ray McBride as Employee Representative and Jim McTague as Employer Representative, met on January 20, 1992 to consider the application at which time the Board determined that further information was required.

4. On February 21, 1992, the Board received the following documents:

- (a) a copy of the collective agreement entered into between Cavendish Farms and the United Food and Commercial Workers, Local 1252 which was in effect to December 31, 1991;
- (b) a copy of Board Certification Order 8-67 between Local 1255 United Packing House Food and Allied Workers, and Seabrooks Farms Frozen Farms Limited dated June 20, 1968; and;
- (c) a copy of the amendments to Board Certification Order 8-67.

5. The foregoing information provided to the Board on February 21, 1992 reveals the following:

- (a) The Labour Relations Board certified Local 1255, United Packing House Food and Allied Workers as the exclusive bargaining agent for the employees of Seabrooks Farms Frozen Foods Limited on June 20, 1968 by virtue of Board Certification Order 8-67. This Certification Order applied to "all employees of the Respondent employed at the New Annan plant in the Province of Prince Edward Island, but excepting Foreman or Forelady and those above the rank of Foremen or Foreladies".

- (b) The Board amended Certification Order 8-67 on January 23, 1973 to change the name of employer from Seabrooks Farms Frozen Foods Limited to C. M. MacLean Limited and to change the name of the exclusive bargaining agent from Local 1255, United Packing House Food and Allied Workers to Local 1255, Canadian Food and Allied Workers;
- (c) The Board further amended Certification Order 8-67 on September 18, 1980 to change the name of the exclusive bargaining agent from Canadian Food and Allied Workers, Local P282 to United Food and Commercial Workers International Union, Local 282P;
- (d) A collective agreement was entered into between the Respondent and the United Food and Commercial Workers, Local 1252 which was in effect until December 31, 1991, and although it had expired, the Board was advised that negotiations were ongoing.

6. The Board met again on March 25, 1992 in relation to this Application. On March 26, 1992, the Board requested certain information from the Applicant Union in the form of:

- (a) Documentation of the merger, amalgamation or a transfer of jurisdiction from Local 1255, Canadian Food and Allied Workers to United Food and Commercial Workers Local 1252 to United Food & Commercial Workers Local 1252 (In Trusteeship) to United Food and Commercial Workers, Local 864.
- (b) Copy of Constitution of the United Food and Commercial Workers International.

7. On April 7, 1992 the Board received packages of information from the Applicant providing certain information that the Board had requested, namely, copies of the following:

- (a) Constitution of Retail Clerks International Union as amended at its convention July 25-29, 1977.
- (b) Constitution of the Amalgamated Meat Cutters and Butcher Workmen of North America as amended at its convention

June 1-4, 1976.

- (c) Constitution of the United Food and Commercial Workers International Union as amended at its convention August 1-5, 1983 as well as the Merger Agreement adopted June 5-6, 1979 and amended through to August 5, 1983.
- (d) Charter granted by United Food and Commercial Workers International Union to United Food and Commercial Workers Union Local 282P on June 6, 1979.
- (e) Merger Agreement between Newfoundland Fishermen, Food and Allied Workers Union, Local 1252 United Food and Commercial Workers and United Food and Commercial Workers, Local 282P dated September 14, 1984, subject to approval of the International Executive Board of the United Food and Commercial Workers International Union.
- (f) Letter of International Vice President of United Food & Commercial Workers International Union to President of United Food and Commercial Workers International Union dated October 5, 1984 with memo attached recommending approval of merger between Locals 282P and 1252.
- (g) Bylaws of United Food and Commercial Workers Local No. 1252 Fishermans Union approved April 4, 1986.
- (h) Partial transcript of evidence taken before Prince Edward Island Labour Relations Board September 6, 1990 where the Prince Edward Island Labour Relations Board ruled that UFCW Local 1252 was the successor to UFCW 282P.
- (i) Bylaws of United Food and Commercial Workers Union, Local No. 1973.
- (j) Minutes of Joint Executive Board Meeting between UFCW Local 1973 and UFCW Local 1252 approving merger document November 9, 1991.
- (k) Proposed merger document between United Food and Commercial Workers Unions, Locals 1973 and 1252.
- (l) Bulletin from Presidents of UFCW Locals 1973 and 1252 regarding merger of two unions and vote to be held.
- (m) Copy of official merger ballot.

- (n) List of merger votes taken at various plant units and dates of such.
- (o) Tabulated results of merger votes indicating majority voted for merger.
- (p) Application for Charter Modification dated January 1, 1991 regarding United Food and Commercial Workers Union, Local 864.
- (q) Letter from International President of United Food and Commercial Workers International Union dated January 25, 1991 indicating merger had been approved by executive Board and will now be referred to as United Food and Commercial Workers Union, Local No. 864.
- (r) Minutes of Executive Board Meeting of United Food and Commercial Workers Union, Local 864 held January 27-28, 1991.
- (s) Charter granted to United Food and Commercial Workers Union, Local No. 864 by United Food and Commercial Workers International Union on January 1, 1991.
- (t) Letter dated February 14, 1991 signed by UFCW Local 1973 and UFCW Local 1252 indicating merger to United Food & Commercial Workers Union, Local 864 was effective January 1, 1991.
- (u) Letter dated June 4, 1991 from International President of United Food & Commercial Workers International Union to President of United Food and Commercial Workers Union, Local 864 regarding amendment and approval of Bylaws of Local 864.
- (v) Letter dated October 8, 1991 from International President of United Food and Commercial Workers International Union to President of Local 864 confirming International Union approved merger.
- (w) Constitution of United Food and Commercial Workers International Union as amended at its convention July 25-29, 1988.

8. In November 9, 1992, the Board received a package of information from the Applicant in response to a request from the Board. The information received contained copies of the following:

- (a) A letter dated January 25, 1991 from United Food and Commercial Workers International Union to Bruce F. Durno, President of United Food and Commercial Workers, Local 864, indicating:
 - (i) that the membership of Local No. 1973 have voted to merge with those members of Local 1252 located in Prince Edward Island and Nova Scotia;
 - (ii) that the membership of Local No. 1252 located in Prince Edward Island and Nova Scotia have voted to merge with Local No. 1973;
 - (iii) that the International Executive Committee approved the merger effective January 1, 1991 and the new union is to be known as United Food and Commercial Workers Union, Local No. 864.
- (b) A charter card of Canadian Food and Allied Workers Local Union 1255 indicating it was merged into Canadian Food and Allied Workers Local P282 effective 05-01-1973;
- (c) A charter card of Canadian Food and Allied Workers Local P282 re-issued to United Food and Commercial Workers Union, Local No. 282P to reflect the name change resulting from the merger of the Retail Clerks and Amalgamated Meat Cutters on June 6, 1979;
- (d) A charter card re-issued to United Food and Commercial Workers resulting from the merger of Newfoundland Fisherman, Food and Allied Workers, Local 1252 United Food and Commercial Workers, and United Food and Commercial Workers Local 282P;
- (e) A letter dated October 5, 1984 and accompanying agreement dated September 14, 1984 dealing with the merger between

Newfoundland Fisherman, Food and Allied Workers, Local 1252 United Food and Commercial Workers, and United Food and Commercial Workers Local 282P;

- (f) Letters dated November 15, 1984 to Richard Cashin, President of Newfoundland Fisherman, Food and Allied Workers, Local 1252 and United Food and Commercial Workers and Arthur Brown, Financial Secretary of United Food and Commercial Workers, Local No. 282P dealing with merger of two unions.

COMPOSITION OF BOARD PANEL:

9. Subsequent to March 25, 1992, the Employee Representative sitting on this matter withdrew from sitting on this panel of the Board as the particular member has matters pending before the Board, which commenced on March 27, 1992. In light thereof, that Board member is not partaking in any Board meetings, activities or otherwise until such time as all matters pending before the Board which involved his union are resolved. This position was necessary as a result of a decision rendered by the Prince Edward Island Supreme Court - Appeal Division in The National Automobile, Aerospace and Agricultural Implement Workers' Union of Canada (CAW-Canada) v. United Food and Commercial Workers Union, Local 1252 (in Trusteeship) and United Food and Commercial Workers' International Union, [1988] 1 P.E.I.R. B-16.

10. In light of the circumstances enumerated above, this matter presently before the Board is being concluded by the Chair and the Employer Representative sitting together and constituting a quorum under Section 3(8) of the Labour Act, R.S.P.E.I. 1988, Cap. L-1.

DECISION:

11. Section 40 of the Labour Act, supra, prescribes the requirements that must be satisfied before the Board can grant the declaration requested and it states as follows:

"(1) Where a trade union claims that by reason of a merger or amalgamation or a transfer of jurisdiction it is the successor of a trade union that at the time of the merger, amalgamation or transfer of jurisdiction was the bargaining agent of a unit of employees of an employer and any question arises in respect of its right to act as the successor, the board, in any proceeding before it or on the application of any person or trade union affected, may by order declare that the successor has or has not, as the case may be, acquired the rights, privileges and duties under this Part of its predecessor.

(2) Before issuing an order under subsection (1), the board may make or cause to be made such examination of records or other inquiries, and may hold such representation votes as it considers necessary and prescribe the nature of evidence to be furnished to the board.

(3) Where the board makes an affirmative declaration under subsection (1), the successor shall for the purposes of this Part acquire the rights, privileges and duties of its predecessor, whether under a collective agreement or otherwise.

12. Having reviewed the documentation, the Board has satisfied itself of the following:

- (a) while there is no indication that the original Certification Order was changed to reflect the change of name of Local 1255 Canadian Food and Allied Workers to Canadian Food and Allied Workers, Local 282P, the Board finds that such a change did, in fact, occur in 1973;
- (b) in 1973, the Board amended the name of the Union Canadian Food & Allied Workers, Local 282P to United Food & Commercial Workers Union 282P;
- (c) that the United Food and Commercial Workers Union, Local 282P merged with Newfoundland Fishermen Food and Allied Workers Union, Local 1252 to become known as United Food and Commercial Workers Union, Local No. 1252;
- (d) that United Food and Commercial Workers Union, Local 1252 encountered internal problems during the spring of 1988 which led to a trusteeship being imposed for a period of time. [See Board decision dated January 31, 1989 involving Board Application Nos. 87-003; 87-010/88-018];
- (e) that the Prince Edward Island Labour Relations Board in 1990 declared that United Food and Commercial Workers, Local 1252 (In Trusteeship) was the successor to United

Food and Commercial Workers, Local 282P. [See Board decision dated April 26, 1991 involving Application No. 90-012];

- (f) that United Food and Commercial Workers, Local 1252 (in Trusteeship) remained in place as it affected Newfoundland;
- (g) that the Nova Scotia and Prince Edward Island members of United Food and Commercial Workers, Local 1252, (in Trusteeship), decided to merge with Local 1973 to form United Food and Commercial Workers, Local 864;
- (i) that the International Executive Committee of the International Union in effect approved the Trusteeship terminating as it affected those members in Prince Edward Island and Nova Scotia which it has authority to do pursuant to Article 9, Clause G, Section 5 of the United Food and Commercial Workers International Union Constitution as amended July 25 - 29, 1988;
- (g) that the International Executive Committee of the International Union approved the merger between those members of Local 1252 (in Trusteeship) located in Prince Edward Island and Nova Scotia and those members of Local 1973. In essence the International Executive Committee transferred jurisdiction of those individuals who were located in Prince Edward Island and Nova Scotia and were members of Local 1252 in Trusteeship.

13. The Board has reviewed the legislation and the documentation before it and finds as follows:

- (a) United Food and Commercial Workers Union, Local 864 is a trade union;
- (b) At the time of the merger, namely, January 1, 1991, the Board's documentation indicates that United Food and Commercial Workers, Local 282P was the bargaining agent for the employees of the Respondent;

(c) The Board is satisfied that the documentation on file with the Board was in error and bases its decision on the following facts:

(i) The Prince Edward Island Labour Relations Board has previously decided that United Food and Commercial Workers, Local 1252 (in Trusteeship) was the successor to United Food and Commercial Workers, Local 282P;

(ii) As such, prior to January 1, 1991, United Food and Commercial Workers Local 1252 (in Trusteeship) would have been the bargaining agent for a unit of employees located at Cavendish Farms;

(d) Members of United Food and Commercial Workers, Local 1252 (in Trusteeship) located in the provinces of Nova Scotia and Prince Edward Island merged with United Food and Commercial Workers, Local 1973 to become known as United Food and Commercial Workers, Local 864 effective January 1, 1991;

(e) Accordingly, the employees of Cavendish Farms were located in the Province of Prince Edward Island and thus would be included in that group of employees whose jurisdiction was transferred or merged with Local 1973 on January 1, 1991 to form United Food and Commercial Workers Local 864;

(f) The Board is satisfied that United Food and Commercial Workers, Local 864 is the successor to United Food and Commercial Workers, Local 1252, previously in Trusteeship, as it affected those members in Prince Edward Island and Nova Scotia.

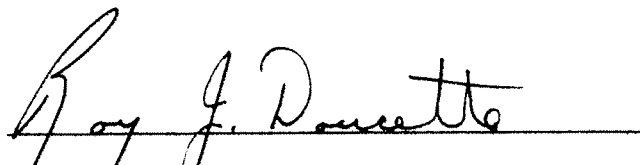
14. Having stated the foregoing, the Labour Relations Board finds the Applicant has satisfied the requirements imposed by the Labour Act, supra. Accordingly, a declaration and order will issue

to the Applicant stating that united Food and Commercial Workers, Local 864 has acquired the rights, privileges and duties formerly held by United Food and Commercial Workers, Local 282P and most recently held by United Food and Commercial Workers, Local 1252 (in Trusteeship) and United Food and Commercial Workers, Local 1252 as it affected those members located at Cavendish Farms.

15. So as to avoid future confusion, an Order will be issued on this date indicating that United Food and Commercial Workers Local 864 is the exclusive bargaining agent for that unit of employees located at Cavendish Farms described as follows:

All employees of Cavendish Farms employed at the New Annan plant in the Province of Prince Edward Island but excepting Foreman or Forelady and those above the rank of Foremen or Foreladies.

This decision of the Labour Relations Board was made this 31st day of December, A.D. 1992 and issued under the hand of its Chief Executive Officer.


Roy J. Doucette
Chief Executive Officer

PANEL:

M. Lynn Murray, Chair

James McTague, Member