



**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:

USEN FISHERIES (1983) LIMITED

RESPONDENT

COUNSEL FOR THE APPLICANT:

EUGENE P. ROSSITER, Q.C.

THE RESPONDENT:

UNREPRESENTED & NOT APPEARING

DECISION

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 an unsigned copy of the collective agreement entered into between United Food and Commercial Workers International Union, Local 1252 and the Respondent which was in place to and including May 31, 1992.

5. 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 Canadian Food and Allied Workers Local P282 to United Food and Commercial Workers Local 282P to United Food & Commercial Workers Local 1252 (In Trusteeship) to United Food and Commercial Workers, Local 864.
- (b) Copy of the first collective agreement or a copy of correspondence recognizing Canadian Food and Allied Workers Local P282 as the sole bargaining agent.
- (c) Copy of Constitution of the United Food and Commercial Workers International.

6. 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.

7. On April 29, 1992 the Board received the following information:

- (a) a copy of a collective agreement between Usen Fisheries Ltd. and Local 282P, Canadian Food and Allied Workers which was in effect until January 30, 1975;
- (b) a copy of the first and last pages of various documents which purport to be collective agreements:
 - (i) between Local P282 Canadian Food & Allied Workers and Usen Fisheries Ltd. in effect until January 30, 1976;
 - (ii) between Local P282 Canadian Food & Allied Workers and Usen Fisheries Ltd. in effect until January 31, 1978;
 - (iii) between Local P282 Canadian Food & Allied Workers and Usen Fisheries Ltd. in effect until January 31, 1980;
 - (iv) between United Food and Commercial Workers International Union Local 282P and Usen Fisheries Limited effective between February 1, 1980 and January 31, 1982;
 - (v) between United Food and Commercial Workers International Union, Local 282P and Usen Fisheries Limited effective between February 1, 1982 and January 31, 1984.

8. The Applicant Union did not file a copy of a Board Certification Order for the employees at the plant in question. Accordingly, the Board must resolve whether or not the employees at Usen Fisheries (1983) Limited are represented by the Applicant Union or its predecessor.

9. Section 19 of the Labour Act, R.S.P.E.I. 1988, Cap. L-1, deals with voluntary recognition and the relevant provisions are outlined below:

"(1) Where a trade union purports to represent employees of an employer and intends to bargain collectively on behalf of the employees, the trade union and employer may make and enter into an agreement in writing, that may be

part of a collective agreement, whereby

(a) the employer recognizes the trade union as the exclusive bargaining agent for the employees; and

(b) the unit of employees to which the agreement extends is defined.

(2) Subject to subsection (3), when an agreement made pursuant to subsection (1) is filed with the Minister, this Act applies as though the trade union was the certified bargaining agent for the employees in the unit defined by the agreement at the time the agreement was filed."

10. The Board has reviewed the documentation filed by the Applicant and has satisfied itself that Usen Fisheries Ltd. recognized Local P282, Canadian Food and Allied Workers as early as January 30, 1973 as the "exclusive Bargaining Agent for the purpose of entering into a collective bargaining relationship with the Company on behalf of all crew members, excluding Captains, of the ships owned and/or chartered by the Company and normally operating out of the port of Souris, P.E.I., and engaged in fishing."

11. The quote aforementioned appears in the Collective Agreements between the same parties that extended over the period ending January 31, 1980. These agreements were filed with the Minister of Labour and as the union was recognized as the exclusive bargaining agent and the bargaining unit was defined, by virtue of Section 19(2) of the Labour Act, supra, the union has acquired the status of a certified bargaining agent as if certified by the Board.

12. The Board has confirmed that subsequent agreements were filed with the Minister. Accordingly, the Labour Act, supra, applies in the case at hand. The information provided to the Board on April 29, 1992 satisfies the Board that Usen Fisheries Limited recognized Local P282 Canadian Food & Allied Workers and, more recently, United Food and Commercial Workers International Union, Local 282P as the certified bargaining agent for its employees although no formal certification order affecting the employees at

this plant was provided to the Board.

COMPOSITION OF BOARD PANEL:

13. 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.

14. 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, supra.

DECISION:

15. 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.

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

- (a) that Local P282, Canadian Food & Allied Workers became the United Food & Commercial Workers International Union Local 282P;
- (b) 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;
- (c) 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];
- (d) 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];
- (e) that United Food and Commercial Workers, Local 1252 (in Trusteeship) remained in place as it affected Newfoundland;
- (f) 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;
- (g) 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;

- (h) 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.

17. In order for the Board to make the declaration requested under Section 40 of the Labour Act, supra, the Board must be satisfied that the Applicant Union or its predecessor was the bargaining agent for the employees of the Respondent. A review of the collective agreement entered into between Local P282, Canadian Food and Allied Workers, and Usen Fisheries Ltd. effective from January 30, 1973 to January 30, 1975 indicates as follows:

- (a) the employer recognized the union as the exclusive bargaining agent [clause 1.1];
- (b) the unit was defined to be "all crew members, excluding Captains, of the ships owned and/or chartered by the Company and normally operating out of the port of Souris, P.E.I., and engaged in fishing".

18. As noted previously, the Respondent has recognized Local P282, Canadian Food and Allied Workers as the certified bargaining agent for the employees in the unit as defined by the collective agreement. There is no evidence before the Board that would lead it to conclude that another trade union represents the employees in question or that the trade union does not represent a majority of the employees in the unit. The employer was given an opportunity to address any issue it was concerned with, yet it made no representations in any regard.

19. 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) On January 1, 1991, documentation on file with the Minister would support the position that United Food and Commercial Workers, Local 282P, and most recently United Food and Commercial Workers Local 1252, was recognized as the bargaining agent for the employees of the Respondent;
- (c) 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;
- (d) Accordingly, the employees of Usen Fisheries (1983) Limited 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;
- (e) 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.

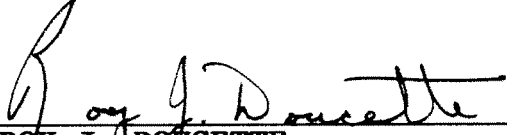
20. Having stated the foregoing, the Labour Relations Board finds the Applicant has satisfied the requirements imposed by the Labour Act, supra. Accordingly, a declaration and order will issue to the Applicant stating that United Food and Commercial Workers, Local 864 has acquired the rights, privileges and duties formerly held by United Food and Commercial Workers, Local 1252 (in Trusteeship) and United Food and Commercial Workers, Local 1252 as

it affected the members of Usen Fisheries (1983) Limited.

21. 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 Usen Fisheries (1983) Limited described as follows:

All employees of Usen Fisheries (1983) Limited in the Province of Prince Edward Island including all crew members, excluding Captains, of the ships owned and/or chartered by the Company and normally operating out of the port of Souris, P.E.I., and engaged in fishing.

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
Jim McTague :Member