



**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 RIGHTS - Section 39

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 rights was filed by the Applicant requesting a declaration that Cavendish Farms is a successor employer to C. M. MacLean Ltd. under the provisions of Section 39 of the Labour Act, R.S.P.E.I. 1988, Cap. L-1 by virtue of a sale of business occurring in approximately 1981

and the Respondent entering into collective agreements with the Applicants predecessor, United Food & Commercial Workers, Local 1252.

2. The Chief Executive Officer sent notice of the Application to the Respondent on November 13, 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 the United Food and Commercial Workers, Local 1252 on May 28, 1989 and the Respondent which was in place to and including December 31, 1991;
- (b) a copy of Board Certification Order 8-67; and
- (c) a copy of the amendments to 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 the United Packing House Food and Allied Workers, Local 1255 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 [Seabrooks Farms Frozen Foods Limited] 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

22, 1973 to change the name of the Respondent employer from Seabrooks Farms Frozen Foods Limited to C. M. MacLean Limited.

(c) The Board also amended Certification Order 8-67 on January 22, 1973 to change the name of the exclusive bargaining agent from United Packing House Food and Allied Workers Local 1255 to Canadian Food and Allied Workers, Local 1255.

(d) The Board also 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.

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, which information is outlined in a decision being issued on this date involving the same parties and being Application No. 91-025.

8. The Board has been advised that negotiations for a new collective agreement were ongoing.

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 39 of the Labour Act, supra, prescribes the requirements that must be satisfied before the Board can grant the declaration requested, the relevant provisions of which state as follows:

"39.(1) Where an employer sells, leases or transfers or has agreed to sell, lease or transfer his business or the operations thereof or any part of either of them, and

(a) either the employer or the purchaser, lessee or transferee or both of them is a party to or is bound by a collective agreement with a bargaining agent on behalf of any employees affected by such sale, lease or transfer;

(b) one or more bargaining agents have been certified as bargaining agent for any such employees;

(c) one or more trade unions have applied to be certified as bargaining agent for any such employees; or

(d) one or more bargaining agents have given or are entitled to give notice under either section 21 or

section 23 with respect to any such employees, unless and until the board otherwise directs, such collective agreement, certification, application, notice or entitlement to give notice continues in force and is binding upon such purchaser, lessee or transferee.

(2) Any such employer, purchaser, lessee or transferee, or any such bargaining agent or trade union may apply to the board for the resolution of any question or problem that, as a result of such sale, lease or transfer, has arisen or may arise with respect to any such collective agreement, certifications, applications, notice or entitlement to give notice.

(3) Upon such application being made, the board shall, by order, make such award, give such direction, or take such other action, as in its discretion the board considers appropriate, to resolve any such question or problem and, without restricting the generality of the foregoing, may by such order or subsequent order

(a) amend or rescind to such extent as the board considers necessary or appropriate any such collective agreement;

(b) revoke or amend any such certification or amend any such application for certification;

(c) modify or restrict the operation of any such notice or entitlement to give notice;

(d) determine whether employees affected constitute one or more appropriate bargaining units;

(e) if more than one collective agreement is to continue in force, designate which employees are to be covered by such agreements;

(f) modify or restrict the operation or effect of any provision of any such collective agreement and define the rights with respect thereto of any employees affected by such sale, lease or transfer;

(g) declare which trade union shall be the bargaining agent for such employees; and

(h) interpret any provision of any collective agreement."

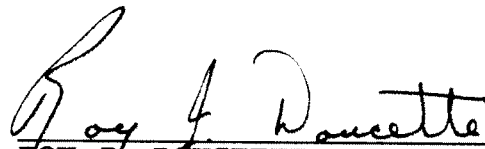
12. The Board has reviewed the legislation and the documentation before it and finds as follows:

(a) by decision rendered on this date, the Board has found that the Applicant is the successor to United Food and Commercial Workers, Local 282P and most recently United Food & Commercial Workers Local 1252 (in Trusteeship) and United Food & Commercial Workers, Local 1252 as it affected those members located at Cavendish Farms;

- (b) The Certification Order previously issued by the Prince Edward Island Labour Relations Board has not been revoked in relation to the employees of Cavendish Farms;
- (c) Successive collective agreements have been entered into between the Respondent and the Applicants' predecessor;
- (d) The Board can take notice of the number of applications that have been before the Board in recent years involving the Respondent and the Applicants predecessor;
- (e) Cavendish Farms acquired the business formerly known as C.M. MacLean Limited by virtue of a sale, lease or transfer;
- (f) At the time of the transfer, the bargaining agent for the employees of C.M. MacLean Limited was the Applicant or its predecessors.

13. 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 the Respondent is the successor to C. M. MacLean Limited and Certification Order 8-67 will be amended to reflect this decision of the Board.

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