



**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: APPLICATION FOR DECLARATION RE SUCCESSORSHIP and
APPLICATION FOR REVOCATION OF CERTIFICATION ORDER**

BETWEEN:

**GABRIEL ELBAZ, doing business under the firm
name and style of Summerside Seafood Supreme**

APPLICANT

AND:

UNITED FOOD AND COMMERCIAL WORKERS' UNION, LOCAL 864

RESPONDENT

COUNSEL FOR THE APPLICANT:

DAVID W. HOOLEY

COUNSEL FOR THE RESPONDENT:

EUGENE P. ROSSITER, Q.C.

BACKGROUND OF APPLICATION NOS. 92-009 and 92-010:

1. The Applicant filed with the Labour Relations Board (hereinafter referred to as the "Board") an Application for Revocation of Certification Order 11-72 (Application No. 92-009) on May 12, 1992. The Application was made pursuant to Section 20 of the Labour Act, R.S.P.E.I. 1988, Cap. L-6 (hereinafter referred to as the Labour Act) on the ground that a majority of the employees no longer wished to be represented by the Respondent. A representation vote was requested.

2. On the same date, the Applicant also filed with the Board an Application for a Declaration that it was not a Successor to Lobster Specialties Limited, in Receivership, and Summerside Sea Products Ltd., in Receivership, (Application No. 92-010). The Application was made pursuant to Section 39 of the Labour Act on the ground that a sale of a business did not take place. The Board was also requested to order a pre-hearing representation vote.

3. The Chief Executive Officer of the Board set May 27, 1992 as the terminal date for both Applications.

4. The Board received correspondence from the solicitor representing the Respondent on May 19, 1992 indicating it intended to intervene on both applications. A panel of the Board consisting of M. Lynn Murray as Chair, Ted Crockett as Employee Representative, and Gerald Doyle as Employer Representative, met with counsel for the parties on May 29, 1992 to deal with a number of matters.

DECISION

5. The Board was very cognizant of the recent history that had occurred between the Respondent and prior owners of the plant in question (referred to as the "Summerside plant"), which can be briefly summarized as follows:

- (a) In 1990, Application 90-011 was filed with the Board, being an Application for a declaration that Summerside Sea Products Limited was a successor to National Sea Products Ltd. On April 26, 1991, a panel of the Board decided that Summerside Sea Products Limited was a successor to National Sea Products Ltd.
- (b) In 1990, Application 90-012 was also filed with the Board, being an Application for a declaration that Lobster Specialties Limited was a successor to Summerside Sea Products Ltd. On April 26, 1991, a panel of the Board decided that Lobster Specialties Limited was a successor to Summerside Sea Products Limited.

(c) On May 15, 1991, Application 91-007 was filed with the Board by certain employees of Lobster Specialties Limited wherein they requested Revocation of the Certification Order that had been issued in relation to the Summerside plant. On September 6, 1991, a panel of the Board rendered written reasons in relation to the above noted matter, wherein it held that the application was not timely, and accordingly, revocation was not granted.

6. In the Successorship Application, the Applicant requested a vote of its employees, pursuant to the provisions of Section 39 of the Labour Act. The Board states unequivocally that not every Successorship Application will result in a vote being ordered. However, the circumstances of the bargaining relationship that had existed at the Summerside plant over the past number of years were clearly unique. Considering the situation that has existed at the Summerside plant and the number of applications that have been filed with the Board previously, the Board was of the view that it would be appropriate for the employees of the Applicant to express their wishes by means of a vote. Accordingly, on June 9, 1992, the Board met and ordered pursuant to Section 39 of the Labour Act, that the Chief Executive Officer of the Board conduct a vote of the employees of the Applicant employed at the Summerside plant, said vote to occur on June 25, 1992.

7. The Chief Executive Officer of the Board did conduct the vote on June 25, 1992, and has reported to the Board that 146 employees cast ballots, the results of which are outlined below:

Number of votes in favour of the Respondent	33
Number of votes against the Respondent	106
Number of spoiled ballots	7

8. The Respondent has advised the Board in writing on June 29, 1992 that it is withdrawing all applications that it currently has pending in relation to the Summerside plant and will not be intervening in the above noted applications.

9. The Board has very broad powers which are outlined in

Section 39 of the Labour Act, in dealing with Successorship Applications. One of those powers is to revoke or amend any certification order.

10. In light of the results of the vote, the Board does not find it necessary to deal with whether or not the Applicant is a successor to Lobster Specialties Limited. Quite simply, there was no evidence placed before the Board to enable the Board to make a reasoned decision on same and given the results of the vote, the Board felt it was unnecessary to hear evidence dealing with the Successorship Application as the employees clearly do not wish to be represented by the Respondent.

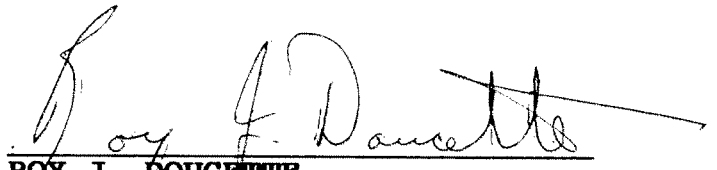
11. Given the overwhelming majority of employees who have expressed their desire not to be represented by the Respondent, the Board therefore orders that Certification Order 11-72 and any subsequent amendments thereto, be and is hereby revoked.

12. In light of the ruling that has been made wherein the Certification Order affecting the employees at the Summerside plant has been revoked under the provisions of Section 39 of the Labour Act dealing with successorship, the application for Revocation of Certification Order 11-72 is academic and the Board does not feel it necessary to deal with it. The Board also wishes to state that it has made no determination in relation to the Application for Revocation, either in terms of timeliness or otherwise as it was not necessary to do so.

CONCLUSIONS:

13. Pursuant to Section 39(3) of the Labour Act, the Board orders that Certification Order 11-72 and any amendments made to said Certification Order by virtue of any Board decision previous to the rendering of this order be and is hereby revoked on the grounds that a majority of the employees clearly do not wish to be represented by the Respondent.

This decision of the Labour Relations Board was made this 30th day of June, A.D. 1992 and issued under the hand of its Chief Executive Officer.


ROY J. DOUCETTE
CHIEF EXECUTIVE OFFICER

PANEL:

M. Lynn Murray:Chair
Ted Crockett :Member
Gerald Doyle :Member