



**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 CERTIFICATION
UNFAIR LABOUR PRACTICE COMPLAINT**

BETWEEN:

UNITED FOOD AND COMMERCIAL WORKERS, LOCAL 864

APPLICANT

AND:

GEORGETOWN TIMBER LTD.

RESPONDENT

Counsel for The Applicant:

Eugene P. Rossiter, Q.C.

Counsel for The Respondent:

William G. Lea, Q.C.

Background

1. An Application for Certification, on behalf of the Applicant, was filed with the Board on July 7, 1992. Together with Form 1, a directory of Union officers, membership evidence and receipts, constitution and bylaws and a list of people wishing U.F.C.W. Local 864 be certified, was filed on that date.

2. The Chief Executive Officer of the Board set July 24, 1992, as the terminal date.

3. On July 22, 1992, the Board received Form 5 Reply to Application for Certification from Georgetown Timber Ltd., which contained the required information and an addendum which reads as follows:

10. "In addition to claiming that a slightly different unit from that proposed by the applicant is appropriate, the Respondent disputes that a majority of the employees in the appropriate unit wish the Applicant to be certified and it puts the Applicant to the proof thereof."

4. On July 23, 1992, the Board received a petition from employees of Georgetown Timber Ltd., which purported to contain the signatures of the employees who did not want to be represented by a union.
5. On July 29, 1992, the Applicant filed an Unfair Labour Practice Complaint alleging that the Respondent had discharged two employees in contravention of Section 10, (1a) and (1c) of the Act.
6. A panel of the Board, duly appointed by the Chair, reviewed the Application for Certification and supporting documents, the Respondent's reply and the Employee petition. As a result the panel decided that a pre-hearing vote be conducted, the ballots sealed and not counted pending a hearing. The pre-hearing vote was conducted on September 17, 1992.
7. On October 8, 1992, the Board convened a hearing to deal with the Applications.
8. By way of preliminaries, Counsel for the Respondent read into the record the contents of a letter, setting out certain matters which were agreed to by both the Applicant and Respondent.
9. Among other things, the letter stated:
 - (a) *The Unfair Labour Practice Complaint (July 29th) would be settled by the parties according to terms set out in the letter.*
 - (b) *The unit described in the application as appropriate was agreed to with the understanding that the Millwright Filer is considered to be a foreman.*
 - (c) *That if the majority issue is determined by the Board on the basis of membership evidence filed by the Applicant, the parties agreed on the employees to be considered as eligible employees.*
 - (d) *If the majority issue is determined by the Board on the basis of the pre-hearing vote, the parties agreed on the employees to be considered as eligible employees.*
10. The letter also indicated the Respondent would not be making any further representation or calling evidence other than contained in the letter. Counsel for the Respondent also advised the Board verbally of this decision and after reading the letter into the record, Counsel for the Respondent withdrew from the hearing.

11. Counsel for the Applicant presented argument to the issue of majority. Counsel argued that actions of the Employer and certain employees acting on behalf of the Employer had interfered to the extent that the pre-hearing vote would not represent the true wishes of the employees, free from employer undue influence.

12. Troy Martel, an employee, gave evidence that he, along with Tom Batchilder and Christen Ohlandt had requested time off for work on July 13, 1992, and all three were denied. All three took the day off, and on the following Monday, Batchilder and Ohlandt were discharged, Martel was not. Martel testified that both Batchilder and Ohlandt were well known to the employees as key participants in the union organization effort. Batchilder and Ohlandt were the subjects of the Unfair Labour Practice Complaint referred to above.

13. Counsel for the Applicant argued in conclusion that the Board should consider the membership evidence as filed with the Application as the evidence truly reflective of the employees wishes and that the Board should not count nor consider the pre-hearing vote for that purpose.

14. None of the employees who signed the petition of July 23, 1992, came forward to give evidence or make representation at the hearing.

Conclusion

15. The Board, after careful consideration of the evidence and the argument of Counsel, is convinced that the pre-hearing vote has been tainted by certain activities and events between the date of the application and the date of the vote, and that the results of that vote would not necessarily reflect the true wishes of the employees.

16. In the absence of any supporting evidence or testimony in relation to the preparation and circulation of the petition, the Board will not consider the petition of July 23rd, 1992.

17. The Board is of the opinion that the membership evidence provided by the Applicant at date of Application represents the wishes of the employees. Based on an examination of that evidence, the Board is satisfied that a majority of the employees of the employer wish to be represented by the Applicant and that the unit agreed to by the parties is appropriate for collective bargaining.

Decision

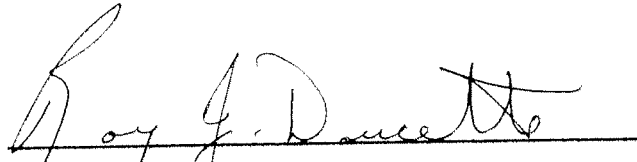
18. Based on the above, the Board has determined that the Applicant is a Trade Union within the meaning of the Labour Act, that the unit described as follows is appropriate for collective bargaining:

"all employees employed by the Respondent in Prince Edward Island excluding owner, production manager, foremen, office employees and summer students."

and that a majority of employees wish the Applicant trade union to be certified as bargaining agent on their behalf.

19. A certification order will be issued accordingly.

This decision of the Labour Relations Board was made this 8th day of October a.d. 1992 and issued under the hand of its Chief Executive Officer.


Roy J. Doucette
Chief Executive Officer

PANEL:

J.J. Revell, Vice-Chairman
Jean-Marc Gallant, Member
Judy Goodwin, Member