



File No. 98-033

Decision No.

**IN THE MATTER OF AN APPLICATION FOR REVOCATION OF CERTIFICATION
ORDER 01-98 PURSUANT TO SECTION 20 OF THE PRINCE EDWARD ISLAND
LABOUR ACT, R.S.P.E.I. 1988, CAP. L-1**

BETWEEN:

**SOME OF THE EMPLOYEES OF
MALPEQUE-WESTISLE FERTILIZERS LTD.
C.O.B. POOLES CORNER POTATO STORAGE**

APPLICANT

AND:

**GENERAL LABOURERS' AND GENERAL WORKERS'
IN CONSTRUCTION, INDUSTRIAL AND COMMERCIAL,
LOCAL UNION NO. 1077**

RESPONDENT

Representatives of the Applicant

**Darren Ross, Ken MacKenzie, Quen Johnson,
David Delodder and Wally Buchanan**

Counsel for the Respondent

Mr. J. Gordon MacKay, Q.C.

DECISION

BACKGROUND

1. On November 18, 1998, the Applicants filed with the Prince Edward Island Labour Relations Board, hereinafter referred to as the "Board", an application for Revocation of Certification 01-98 issued on the 6th day of January 1998. The grounds for Revocation stated in the applicant's Form 7 are simply that "a majority of employees don't wish to be represented by the Union".
2. On November 26, 1998, the Respondent filed its Reply to Application for Revocation of Certification in Form 10 and the basis of their argument is set out in paragraph 4 which states as follows:

“The Respondent submits that the Applicants are barred from making an application for revocation of certification pursuant to Section [sic] of the Labour Act, 1988, Cap. L-1 due to the fact that the application made by the Respondents dated November 17, 1998, was made during the so-called closed period. Section 12(4) of the Labour Act provides where a collective agreement binding on any of the employees in the unit is in force and the agreement is for a term of not more than two (2) years, the application may be made only after the commencement of the last two months of the term of the agreement. The term of the agreement between the Respondent Union and the employer, Malpeque-Westisle Fertilizers Ltd., is now effectively from November 5, 1998 to January 5, 2000, as neither the employee nor the Respondent Union served notice on the other of termination of the collective agreement as required under Article 17.01, aforesaid, and the collective agreement was automatically extended by virtue of article of 17.01 prior to the application for revocation of the certification being filed by the Applicants herein.”

3. The Board Panel, consisting of Greg Howard, Vice-Chair, with Members Judy Goodwin and Bennett Carr, convened the hearing on February 3, 1999, at MacLauchlin’s Motel. In attendance were the following employees on behalf of the Applicant: Ken MacKenzie, Darren Ross, Quen Johnson, David Delodder and Wally Buchanan. Mr. Gordon MacKay, Q.C., Counsel for the Respondent Union, attended with the Business Manager for the Respondent, Mr. Lloyd MacDonald. Also in attendance was Mr. Eugene Rossiter, Q.C., who observed the proceedings on behalf of the employer, Malpeque-Westisle Fertilizers Ltd. COB as Pooles Corner Potato Storage.

4. In oral argument, the Applicant employees were represented by Mr. David Delodder. Mr. Delodder relied on the Application of November 17, 1998, and the information contained therein.

5. Local 1077 responded by stating, in summary, that the Application for Revocation was not submitted in a timely fashion. Mr. MacKay provided the Board Panel with a copy of the Collective Agreement. The Board received an original copy, marked Exhibit #1 for the Respondent. The Applicant Employees had no objection to the tendering of this document.

6. The Union referred to Article 17 of the Collective Agreement, entitled “Duration”. Article 17.01 states as follows:

This agreement shall be effective from 6th January, 1998 and shall continue in effect until 5th January, 1999. This agreement shall continue in force from year to year thereafter, unless Notice of Proposed Change or Termination is given in writing by either party not more than four (4) months and not less than two (2) months before the date of termination, unless mutually agreed by both parties.

7. The Union also referred the “Board” to Section 20 (4) dealing with Revocations which reads as follows:

“(4) Sections 12 and 13 apply with the necessary changes to applications under this Section.”

and Section 12(4) which reads as follows:

“(4) Where a collective agreement binding on any of the employees in the unit is in force and the agreement is for a term of not more than two years, the application may be made only after the commencement of the last two months of the term of the agreement.”

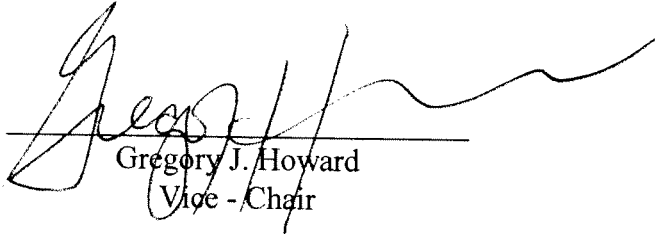
8. On behalf of the Employees, Mr. Delodder pointed out that, according to the Union’s reasoning, the Employees would have no “window of opportunity” to apply for Revocation. There would not be a final two (2) months of the Collective Agreement because it is automatically renewed before it terminates pursuant to Article 17.

9. Having reviewed the relevant provisions of the Act and after hearing from the representative of the employee and counsel for the Union the Board finds that the employee’s application for Revocation of the Certification Order 01-98 was made in a timely fashion.

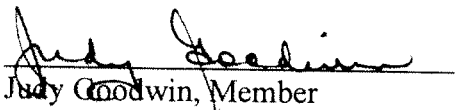
10. Having found that the application was timely, the Board is now required, pursuant to Section 20 (2) of the Labour Act, to determine whether the majority of the employees in a unit no longer wish the Trade Union to act as bargaining agent on their behalf.

11. On March 1, 1999 the Chief Executive Officer and Scrutineers for the applicant and the Union counted the representation vote which was taken on December 7, 1998.

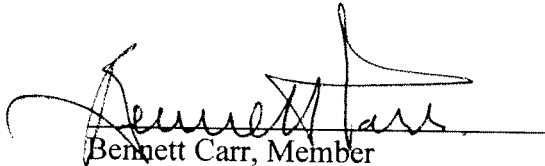
12. The results of the vote confirmed that a majority of the employees no longer wish the Union to act as bargaining agent on their behalf. Accordingly the Board orders that Certification Order 01-98 be revoked.



Gregory J. Howard
Vice - Chair

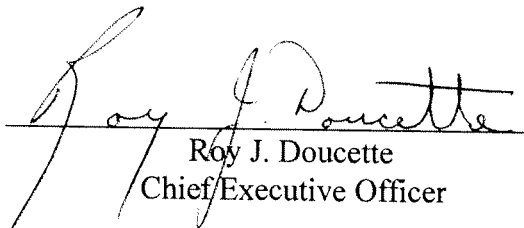


Judy Goodwin, Member



Bennett Carr, Member

THIS DECISION made by the Labour Relations Board on this *1st* day of *March*, 1999, and issued under the hand of its Chief Executive Officer.



Roy J. Doucette
Chief Executive Officer