



GOVERNMENT OF PRINCE EDWARD ISLAND
LABOUR RELATIONS BOARD

J. J. P. H., B. Comm., M.B.A.
Chairman

W.S. Kinnon
Chief Executive Officer

DEPARTMENT OF LABOUR
P.O. BOX 2000,
CHARLOTTETOWN
PRINCE EDWARD ISLAND

D E C I S I O N

UNDER LABOUR PRACTICE COMPLAINT

-Between-

THE CANADIAN BROTHERHOOD OF RAILWAY, TRANSPORT & GENERAL
WORKERS,

COMPLAINANT

-and-

SOUR S SEAFOODS LIMITED

This Complaint was filed with the Labour Relations Board on May 26, 1976 and processed in accordance with the Regulations of the Prince Edward Island Labour Act.

An investigation was conducted by the Chief Executive Officer of the Board as required by the Act, and a hearing to receive representation from the parties was held on July 8, 1976.

The Complainant alleges that the Respondent violated Section 9, subsection (1) (c) of the Labour Act by refusing to execute a collective agreement which the Complainant claims had been negotiated and agreed upon by the parties. The Complainant further alleges that he had attempted unsuccessfully to arrange a meeting with the Respondent for the purpose of executing the collective agreement. The Complainant requests that the Board direct the Respondent to execute the collective agreement referred to above.

The Board, in reaching a decision, has made the following determinations:

1. The Complainant Trade Union had entered a recognition agreement with the Respondent Employer whereby the employer had agreed to recognize the Union as the sole collective bargaining agent for all employees of the Employer below the rank of Foreman. The Employer had further agreed to meet with the Union for the purpose of concluding a collective agreement prior to the opening of the Employer's plant for the 1976 season.
2. The Board is aware of the particular nature of the Employer's operation and that preparations for the opening of the plant must necessarily be concluded several weeks prior to the opening of the lobster fishing season which, in this case, was May 1, 1976.
3. The Complainant Union served notice to commence collective bargaining on January 9, 1976. Serious collective bargaining did not begin until the appointment of Mr. Roger Kennedy as Conciliation Officer on April 8, 1976. A conciliation meeting was held on April 10, 1976 and a tentative collective agreement was agreed to by Mr. Alonzo Babineau, representing the Employer, and Mr. Barrie Hould, representing the Union.
4. A ratification meeting was held on April 20, 1976 and the collective agreement tentatively agreed to on April 10th, was rejected by the membership of the Union.

DECISION

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1. Mr. Hould stated that he attempted to reach Mr. Babineau on April 23rd to advise him of the results of the April 20th vote and to place an alternative offer before him. Mr. Babineau does not recollect such a telephone conversation with Mr. Hould nor does he have any record of it. Subsequent to the hearing, Mr. Hould has filed telephone statements of April 22nd and 23rd recording telephone calls to Mr. Babineau's numbers in Souris and Morell.

2. On April 26th, Mr. Hould forwarded a proposed collective agreement to Mr. Babineau, which was received by Mr. Babineau on May 4, 1976, outlining the terms of a collective agreement quite similar to that which Mr. Babineau had previously agreed.

3. The Board, upon investigation, is satisfied that the Souris Seafoods Limited plant did not open as a lobster processing and canning plant on May 1st; nor has it operated as such in the subsequent period. The Board is aware that some fresh lobsters were handled at the plant during May and June but the Board does not consider this to be a normal operation of the processing plant.

4. The Board recognizes that there is an obligation to bargain in good faith placed upon both sides in the collective bargaining procedure, and that the execution of a collective agreement agreed to by the parties would normally form part of that collective procedure. The Complainant argues that the refusal of the authorized representative of the Employer to sign the collective agreement on May 4th is a violation of the statutory requirement to bargain in good faith and argues that there was a collective agreement, properly negotiated and agreed to, available to the Respondent Company.

5. The Respondent argues that a fair offer was made to the Complainant Union on April 10, 1976 and that the refusal of the membership to ratify the collective agreement relieves the Employer of further responsibility. The Employer argues that the delay by the Union in reaching its decision on ratification was designed to place pressure upon him and the subsequent uncertainty of the status of the plant resulted in a loss of operating personnel. A decision not to reopen the plant, the Employer argued, had to be made at least two weeks prior to the opening of the lobster fishing season on May 1st.

DECISION

The Board, upon review of the evidence, finds that the Respondent Company did not contravene Section 9, sub-section (1) (e) of the Prince Edward Island Labour Act.

The Board is of the opinion that extenuating circumstances, caused primarily by the delay of ten days in the taking of the ratification vote and the several additional days delay in notifying the Respondent Company of the vote, created such uncertainty as to give the Respondent Employer sufficient cause to make the decision not to reopen the plant. The Board is of the opinion that it should not interfere with that decision of the Employer. That decision taken, in the opinion of the Board, for good and sufficient reason, relieves the Employer of the responsibility to execute the collective agreement.

Consequently, the Unfair Labour Practice Complaint is dismissed.

This Decision was made by the Labour Relations Board on August 18, 1976 and is issued over the hand of its Chief Executive Officer.

Labour Relations Board Panel:

J.J. Revell, Chairman
Leo McCormick
Roy Lambie


CHIEF EXECUTIVE OFFICER.