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Northwest Construction Limited v International Union of Operating Engineers, Local 721

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LABOUR RELATIONS BOARD NOVA SCOTIA

CONSTRUCTION INDUSTRY PANEL

IN THE MATTER of the Trade Union Act of Nova Scotia, and

IN THE MATTER of Northwest Construction Limited,
Suite 206, Halifax Shopping Centre,
Halifax, Nova Scotia

Applicant

- and -

International Union of Operating Engineers,
Local 721,
P.O. Box 237,
Lower Sackville, Nova Scotia

Respondent

APPLICATION having been made to the Labour Relations Board (Nova Scotia) on June 20, 1977 for revocation or variation of L.R.B. No. 440C by which the Respondent was certified as Bargaining Agent for a Bargaining Unit consisting of all employees of the Applicant engaged in the operation of cranes, bulldozers, trucks in excess of one ton capacity, and similar equipment, all those primarily engaged in the repairing and maintaining of same, but excluding all other employees, Foreman other than Working Foreman, and those equivalent to the rank of Foreman and above, Office Employees, and those employees excluded by Clauses (i) and (ii) of Paragraph (e) of Section 89 of the Trade Union Act;

AND the Applicant having requested a Hearing pursuant to Sec. 93 (2) of the Trade Union Act;

AND the Board having considered the Application and representations made on behalf of the Applicant and the Respondent at a Hearing held on July 21, 1977;

AND the Board not having been satisfied, for the reasons set out below, that L.R.B. Order No. 440C should be revoked or varied;

THEREFORE, the Labour Relations Board (Nova Scotia) does hereby dismiss this Application.

Before: I. Christie, Chairman and Board Members Messrs. F. Creaser and A. Rafuse.

I. Christie (for the Panel):

Sub-section 93 (2) of the Trade Union Act provides:

Subsection (9) of Section 15 or any provision of the Act or regulations requiring notice shall not apply to an application under Section 92, but upon application by the employer of employees on whose behalf a trade union or council of trade unions has been certified, or by another trade union or council of trade unions, the Panel may revoke or vary an order of certification under Section 92 and shall, in every such case, give an opportunity to all interested parties to present evidence and make representations.



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This makes it clear that the Panel is not required to hold a hearing before certifying a union for employees in the construction industry. However, there is nothing in the Act to preclude a pre-certification hearing where the Panel is of the opinion that a hearing would facilitate the determinations that it must make under Section 92 of the Act; what is the appropriate bargaining unit (s.s. 92 (2)); who is an employee in that unit (s.s. 92 (1) and (3)); and which employees are members in good standing of the applicant trade union (s.s. 92 (1) and (3)).

In this matter the Panel held a pre-certification hearing and on the basis of evidence presented they determined that the appropriate bargaining unit consisted of four employees of Northwest Construction Limited. The four people in question were all interveners at the first hearing and the Panel heard them in camera by agreement of all parties.

It is to be noted that these employees were "interveners", not "petitioners", in the proceeding. The petition procedure, which was the subject of the decision of the Nova Scotia Supreme Court, Appeal Division, in the Schwartz case (1975), 65 D.L.R. (3d) 506 referred to by Mr. Laws on behalf of the applicant, has never applied in construction industry certification applications. The petition procedure was established by Regulation No. 2 of "certain regulations respecting craft units and the voting of employees" made by the Governor in Council on the 14th day of June, 1973, by Order in Council 73-580A (as amended). The Regulation which was revoked on the 7th day of June, 1977 by Order in Council 77-646, referred specifically to applications for certification under section 24 of the Trade Union Act, which governs certifications generally, and not to section 92 which applies to construction industry certifications.

On the basis of the evidence before it in the first hearing on this matter, the Panel issued L.R.B. Order No. 440C in which it stated that it had been satisfied that a majority of the employees of Northwest Construction Limited were members in good standing of the I.U.O.E., Local 721, in accordance with Regulation 10 Governing Procedure of the Board. Regulation 10 provides:

For purposes of an Application for Certification by a trade union a person is a member in good standing of a trade union who,

- (a) at the date of the filing of the Application for Certification has joined or signed an application for membership in the trade union, and ...

Evidently the Panel acted under paragraph 92 (3) (b) of the Trade Union Act, which provides:

if the Panel is satisfied that the applicant trade union or council of trade unions has as members in good standing more than fifty percent of the employees in the appropriate unit the Panel may certify the trade union or council of trade unions as the bargaining agent of the employees in the unit;



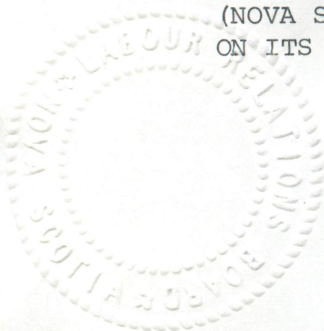
LABOUR RELATIONS BOARD
NOVA SCOTIA

CONSTRUCTION INDUSTRY PANEL

In our opinion there was no basis upon which the Panel could have treated the application as coming within paragraph 92 (3) (c), which directs the Panel to order a vote because that paragraph does not apply where the Panel is satisfied that the applicant trade union has as members more than fifty per cent of the employees in the appropriate bargaining unit.

Mr. Laws, who appeared in this application on behalf of the Applicant Employer and at the previous hearing on behalf of the intervening employees, submitted that since paragraph 92 (3) (b) provides that the Panel "may" certify an applicant Trade Union which has more than fifty per cent membership in the bargaining unit, there is a discretion that should have been exercised in this case by taking and counting a vote of the employees and certifying or not on that basis. We must reject his submission. Having considered all the evidence and representations at both hearings and bearing in mind the emphasis that section 92 of the Trade Union Act puts on trade union membership as the basis of certification we see no reason to revoke or vary L.R.B. No. 440C.

MADE BY THE CONSTRUCTION INDUSTRY PANEL OF THE LABOUR RELATIONS BOARD (NOVA SCOTIA) AT HALIFAX THIS FOURTH DAY OF AUGUST, 1977, AND SIGNED ON ITS BEHALF BY THE CHIEF EXECUTIVE OFFICER.



P. F. Langlois
Chief Executive Officer