10-25-1977

McCarthy v International Brotherhood of Electrical Workers, Local 625

Innis Christie

L.R.B. NO. 456C
(Sec. 52)

LABOUR RELATIONS BOARD
NOVA SCOTIA

CONSTRUCTION INDUSTRY PANEL

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

IN THE MATTER of Daniel Joseph McCarthy,
61 Victoria Street,
Truro, Nova Scotia — Complainant

- and -

Chester Rice,
Business Manager,
International Brotherhood of
Electrical Workers,
Local 625,
6074 Lady Hammond Road,
Halifax, Nova Scotia

- and -

International Brotherhood of
Electrical Workers,
Local 625,
6074 Lady Hammond Road,
Halifax, Nova Scotia — Respondents

A COMPLAINT having been made to the Construction Industry Panel of the Labour Relations Board (Nova Scotia) on May 25, 1977, pursuant to Section 52 of the Trade Union Act alleging that the Respondents violated Section 52 (f), (g), and (i) of the Trade Union Act;

AND the Complaint having been contested by the Respondents;

AND the Panel having considered the Complaint and the documents filed by the Complainant and the Respondents, and representations made and evidence presented on behalf of the parties at Hearings held on July 8, July 22, August 29, and September 19, 1977;

AND the Panel, for the reasons set out below, having found that the International Brotherhood of Electrical Workers, Local 625, has violated Section 52 (f) of the Trade Union Act;

THEREFORE, the Construction Industry Panel of the Labour Relations Board (Nova Scotia) does hereby order Local 625, International Brotherhood of Electrical Workers, to cease and desist from applying its membership rules to Daniel Joseph McCarthy in a discriminatory manner; to cease and desist from denying Daniel Joseph McCarthy membership because he is or was an employee of Western Electrics Limited and to admit him to membership in priority to any other apprentice within the jurisdiction of Local 625 unless, in accordance with established non-discriminatory general rules and policies of Local 625, another apprentice is or other apprentices are entitled to be admitted to membership in priority to Daniel Joseph McCarthy.

The Construction Industry Panel will remain seized of this matter. Upon another apprentice or apprentices being admitted to membership in Local 625, International Brotherhood of Electrical Workers, in priority to Daniel Joseph McCarthy, and upon complaint by him, the Panel will order that Daniel Joseph McCarthy be admitted to membership unless Local 625 satisfies the Panel that it has complied with this Order.

. . . 2

L.R.B. No. 456C
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LABOUR RELATIONS BOARD
NOVA SCOTIA

CONSTRUCTION INDUSTRY PANEL

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

Innis Christie (for the Panel):

This is a complaint of breach of Section 52 (f), (g), and (i) of the Trade Union Act, S.N.S., 1972, c.19. The complaint with regard to Subsection (i) was dropped in the course of the Hearings. Subsections (f) and (g) of Section 52 provide:

> No trade union and no person acting on behalf of a trade union shall
>
> (f) expel or suspend an employee from membership in the trade union or deny membership in the trade union to any person by applying to him in a discriminatory manner the membership rules of the trade union;
>
> (g) take disciplinary action against or impose any form of penalty on an employee by applying to him in a discriminatory manner the standards of discipline of the trade union.

The Panel has considered all the evidence and, without attempting an exhaustive dissertation of all the relevant facts, the events leading up to the complaint appear to be the following.

The Complainant, McCarthy, graduated from Vocational School in June, 1975. Shortly thereafter he met with the Respondent, Chester Rice, Business Manager for Local 625, International Brotherhood of Electrical Workers, and had his name placed on a waiting list for placement on a job by the Union.

The existence of this list is not recognized in the Collective Agreement between the Respondent Union, Local 625, International Brotherhood of Electrical Workers, and the Construction Association Management Labour Bureau Limited on behalf of its various member electrical construction contractors but there is no question of its importance as far as Local 625 is concerned.

There has been a running dispute between Western Electrics Limited, a member of the Bureau bound by the agreement, and Local 625 over the use of the list. In essence, Local 625's position is that while under the "union security" provision of the Collective Agreement, if Local 625 is unable to supply a union member upon request by an employer, the employer is entitled to hire a person "off the street", the Union can refuse to "clear" such a person and thereby force the employer to take new entrants into the trade from the Union waiting list, in order as the Union refers them. Western Electrics Limited takes the position that the requirement in the Collective Agreement that persons hired "off the street" be "cleared" means only Local 625 must be informed. This dispute is now in arbitration. It is obviously a matter of interpretation of the Collective Agreement and the Panel takes no position on it, beyond recognizing the dispute as an important part of the background of the complaint before us.

. . . 3

LABOUR RELATIONS BOARD
NOVA SCOTIA

CONSTRUCTION INDUSTRY PANEL

In September, 1976, the Complainant, McCarthy, had not been placed on a job by the Union. He was offered work by Western Electrics Limited in Truro and took it. His presence on the job was disputed by the Respondent, Chester Rice, on behalf of Local 625, as part of the dispute between the Union and Western over clearance. In the result, McCarthy was given verbal clearance and stayed on the job until he was bumped just before Christmas, 1976.

Early in January, 1977, McCarthy presented Chester Rice with an application for admission to Local 625 and a request from Western Electrics Limited for a union apprentice. The request was not filled and McCarthy went back to work for Western. There was a conflict in the evidence as to whether Chester Rice was informed of this fact by Western and, of course, the dispute over whether merely informing the Union constituted clearance continued. This flared into an incident on the job and on March 30, a Union journeyman, Rod McDonnell, was fined $50.00 by the Union for working with McCarthy. Following that, McCarthy quit the job.

On April 8 or 9, McCarthy called Rice to inquire about his Union membership and was told that it was no use calling because he was not going to be admitted. There was some conflict about the date of this call, but the Panel finds that it was very shortly after April 7, the date of the April meeting of Local 625 at which it was decided to deny membership to McCarthy.

In the course of the Hearings in this matter, the Panel ruled that the complaint before us, which was received on May 12, 1977, was timely, within the terms of Section 53 (2) of the Trade Union Act, because either March 30 or April 8, 1977, was the first date "on which the Complainant knew, or in the opinion of the Panel, ought to have known, of the action or circumstances giving rise to the complaint".

Evidence introduced by the Respondents establishes that McCarthy's name, along with several others, was first brought up for consideration of admission to membership in Local 625 on March 7, when the whole matter was put over to April 7.

On April 7, two applicants for membership in Local 625 were admitted and four were rejected. The Union secretary's notes of the meeting are cryptic. Beside the names of four of the candidates, including the two admitted, he has noted information relating essentially to the length of their experience. Beside McCarthy's name and that of another applicant who was not admitted, he has noted simply "Working for Western".

The membership committee chairman for the Truro area unit of Local 625, Gordon MacDonald, testified that the main reason McCarthy was not admitted to membership was that he had not shown sufficient interest, in that he had not called MacDonald on the telephone frequently enough. MacDonald also suggested that McCarthy had been rude to him.

. . . 4

LABOUR RELATIONS BOARD
NOVA SCOTIA

CONSTRUCTION INDUSTRY PANEL

Without reiterating in detail the evidence relating to the alleged reasons for the denial of membership to McCarthy, the Panel finds that the reasons given by the Union witnesses are unconvincing. We find it difficult to believe that in determining who should be admitted to membership a responsible Union in a highly skilled trade would rely on the reasons put forward. Partly for that reason we do not find the testimony of witnesses called by the Respondent to be entirely credible. On this basis, on the basis of the Union's own minutes of the April 7 meeting, and on the basis of testimony by the Complainant and other non-Union apprentices who testified with regard to the attitude toward Western Electrics Limited manifested by Rice and MacDonald, the Panel finds as a fact that the reason why the Complainant was not considered further for membership in Local 625 was that he was working for Western Electrics Limited.

The Complainant has alleged breach of Section 52 (f) and (g). In the opinion of the Panel, no breach of Section 52 (g) has been established. The Complainant was never a member of Local 625, International Brotherhood of Electrical Workers, so we do not see how the Union could have been guilty of "applying to him in a discriminatory manner the standards of discipline of the trade union". Moreover, as we held in McCulloch v. Orman, International Union of Elevator Constructors, and Dover Corporation (Canada) Limited, L.R.B. No. 426C, the terms "disciplinary action" and "penalty" in Section 52 (g) of the Trade Union Act do not include expulsion or suspension from membership in the trade union "or denial of membership in the trade union". To interpret Section 52 (g) to cover these matters would be to render redundant Section 52 (f) which deals specifically with them.

The serious issue is whether the denial of membership in Local 625 to the Complainant, McCarthy, because he was working for Western Electrics Limited, constituted the application to him "in a discriminatory manner" of the membership rules of the trade union, contrary to Section 52 (f) of the Trade Union Act.

In our opinion the word "discriminatory" in this context means the application of membership rules to distinguish between individuals or groups on grounds that are illegal, arbitrary or unreasonable. A distinction is most clearly illegal where it is based on considerations prohibited by the Human Rights Act, S.N.S., 1969, c.11, as amended; a distinction is arbitrary where it is not based on any general rule, policy or rationale; and a distinction may be said to be unreasonable where, although it is made in accordance with a general rule or policy, the rule or policy itself is one that bears no fair and rational relationship with the decision being made. The classic example is a rule excluding all applicants with red hair from some position.

In the matter before us, to exclude an applicant from membership in the Respondent Union because he is working for Western Electrics Limited, a unionized employer with whom the Union happened to have an arbitrable dispute, was not, in the opinion of the Panel, fair. McCarthy is not a party to the dispute; he is simply caught up in it because of his commendable desire to work. Furthermore, the fact that McCarthy was working for Western Electrics Limited was not an acceptable basis for excluding him from membership in Local 625 because his exclusion constituted the use of a form of economic coercion to settle a dispute over the interpretation of a Collective Agreement binding on the Union, Western Electrics Limited and McCarthy (see the Trade Union Act, s.39); a dispute which under Section 40 (1) of the Trade Union

LABOUR RELATIONS BOARD
NOVA SCOTIA

CONSTRUCTION INDUSTRY PANEL

Act, and the terms of the Collective Agreement is to be settled by arbitration.

In summary, the Panel finds as a fact that because the Complainant, McCarthy, was "Working for Western" his application for membership in Local 625, International Brotherhood of Electrical Workers, was not given further consideration. The Panel finds that to exclude McCarthy from membership in the Union for that reason was to apply to him in a discriminatory manner the membership rules of Local 625.

However, on the evidence the Panel finds that it was Local 625 that discriminated against the Complainant and not Chester Rice personally, although it was Rice who communicated the results to McCarthy. Therefore, no Order has been made against him personally.

Remedy

Section 55 (c) of the Trade Union Act entitles the Panel, in respect of a failure to comply with Section 52 (f), to "by Order, require a trade union to reinstate or admit an employee as a member of the trade union". Section 55 (a), (b), and (d), which empower the Panel to award compensation, do not apply to failures to comply with Section 52 (f). We must hold, therefore, as we did in the McCulloch case and in Crowell v. Dover Corporation (Canada) Limited, Orman, International Union of Elevator Constructors, Local 125 and International Union of Elevator Constructors, L.R.B. No. 431C, that we cannot order the Respondent Union to pay compensation to McCarthy.

Beyond that, while we have found that McCarthy was not considered further for membership in Local 625, International Brotherhood of Electrical Workers, because he was working for Western Electrics Limited, the Panel is not completely satisfied that had that reason for the denial of membership not been operative, he would nevertheless have been admitted to membership. The Panel is anxious not to disrupt the legitimate admission policies of the Respondent Union and we do not wish to allow the Complainant to turn the discrimination against him into an unfair advantage over other candidates for admission to the trade union. For that reason, we have made our Order in the somewhat cumbersome form set out above. Should the Respondent Union fail to comply with our Order, the proper recourse for the Complainant is to complain further to this Panel before seeking enforcement under Section 83 of the Trade Union Act.

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

P. F. Langlois
Chief Executive Officer

LABOUR RELATIONS BOARD NOVA SCOTIA