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**O'Toole's Transfer Limited v Teamsters, Chauffeurs,  
Warehousemen, Helpers and Miscellaneous Works, Local 927**

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**LABOUR RELATIONS BOARD  
NOVA SCOTIA**

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

IN THE MATTER of O'Toole's Transfer Limited,  
P. O. Box 954,  
Walter's Lane,  
Sydney, Nova Scotia

Complainant

- and -

Teamsters, Chauffeurs, Warehousemen,  
Helpers and Miscellaneous Workers,  
Local 927,  
6050 Almon Street,  
Halifax, Nova Scotia

- and -

William Lemmon, Business Agent,  
Teamsters, Chauffeurs, Warehousemen,  
Helpers and Miscellaneous Workers,  
Local 927,  
6050 Almon Street,  
Halifax, Nova Scotia

- and -

Certain Employees of the Complainant  
To Wit: David Assoun, Kendall Bright,  
Doug Dicks, Joe Erickson, Thomas Morris,  
Joe O'Dea, Daniel Parks, John Parks

Respondents

A COMPLAINT having been made to the Labour Relations Board (Nova Scotia) on May 10, 1978, pursuant to Section 49 of the Trade Union Act by O'Toole's Transfer Limited, Sydney, New Glasgow, and Dartmouth, Nova Scotia, that on May 10, 1978, an illegal work stoppage commenced and is continuing by employees of O'Toole's Transfer Limited who are represented by the Teamsters, Chauffeurs, Warehousemen, Helpers and Miscellaneous Workers, Local 927, by cessation of work in violation of the Trade Union Act;

AND the Board having considered the Complaint and representations made on behalf of the Complainant and the Respondents at a Hearing held on May 15, 1978, including the submission of the Complainant that the Teamsters, Chauffeurs, Warehousemen, Helpers and Miscellaneous Workers, Local 927, did not comply with the requirements of Section 45 (3) (a) of the Trade Union Act;

AND, for the reasons set out below, the Board is satisfied on the basis of the evidence adduced that a majority of the employees in the Unit affected have voted by secret ballot in favour of a strike;

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

Reasons for Decision:

Before: I. Christie, Chairman and Board Members Messrs. Harrington, Tidmarsh, McKay, and Sanford.

For the Board:

A number of issues dealing with the composition of the bargaining unit defined in the Recognition Agreement between the parties were initially dealt with by the Board. First, dealing with the status of two employees on lay-off,



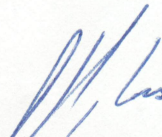
LABOUR RELATIONS BOARD  
NOVA SCOTIA

Kendall Bright and David Assoun, the Board finds they were not employees at the time of the strike vote (the status of Assoun is subject to the pending unfair labour practice before the Board, but in any event the result does not effect the outcome of the strike vote). Second the Recognition Agreement excludes part-time employees and on the evidence before us the Board is satisfied that Greg O'Toole and Roy Baird fall within this category.

Third, the employer contends that the bargaining unit includes four garage mechanics, Byron (Sonny) Goode, Reg Bagnell, Karl Theuerkauf and George Doran, three of whom were employed after the signing of the Recognition Agreement and one of whom was promoted to the new classification of garage mechanic from that of helper. None of the four garage mechanics was requested to participate in the strike vote. The Recognition Agreement on its face includes all employees of O'Toole's Transfer Limited but the Board heard evidence from both sides that not only did the signatories to the Agreement intend to include only employees doing work of the type specified in Schedule A attached to the Voluntary Recognition Agreement (driver, dockhand and helper), the evidence also indicated that in subsequent dealings between them the parties proceeded on the basis that garage mechanics were not part of the bargaining unit. Specifically the Sydney Business Agent of the Union was directed by the Union's counsel in Halifax, at the request of the employer's counsel, not to in any way approach garage mechanics because they were not part of the bargaining unit. In the Board's view, therefore, even if the mechanics must be considered as being within the bargaining unit defined by the literal terms of the Recognition Agreement, we must conclude that there was a subsequent oral agreement to exclude them. It appears to the Board to be both good law and good labour relations to say that the employer cannot lead the union to believe that it is unnecessary to treat the mechanics as part of the bargaining unit for the purpose, among others, of taking their vote on the matter of the strike and after the fact insist that they were in the unit all along.

On the evidence the Board is satisfied that while the niceties of a government election were not observed the majority of the employees in the unit set out in the Recognition Agreement have voted in favour of the strike in a secret vote by ballot.

THIS INTERIM ORDER MADE BY THE LABOUR RELATIONS BOARD (NOVA SCOTIA) AT HALIFAX, THIS NINETEENTH DAY OF MAY, 1978, AND SIGNED ON ITS BEHALF BY THE CHIEF EXECUTIVE OFFICER.

  
 P. F. Langlois  
 Chief Executive Officer

