5-25-1978

# United Brotherhood of Carpenters & Joiners of America, Local 2165 v Can-Am Containers Limited

Innis Christie

L.R.B. No. 2436
(Sec. 22)

# LABOUR RELATIONS BOARD
# NOVA SCOTIA



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

IN THE MATTER of United Brotherhood of Carpenters & Joiners of America,
Local 2165,
700 East River Road,
New Glasgow, Nova Scotia — Applicant

- and -

Can-Am Containers Limited,
Industrial Park,
Springhill, Nova Scotia

- and -

Markland Works Limited,
Industrial Park,
Springhill, Nova Scotia — Respondents

- and -

Mr. Robert Charles Munro,
P. O. Box 2174,
Springhill, Nova Scotia — Intervener

APPLICATION having been made to the Labour Relations Board (Nova Scotia) on March 13, 1978, for Certification of the Applicant as Bargaining Agent pursuant to the Trade Union Act;

AND the Board having conducted a vote on March 20, 1978, in accordance with Section 24 (7) of the Trade Union Act, R.S.N.S. 1972, c.19, s.24, as am. by S.N.S. 1977, c.70;

AND the Application having been contested by the Respondents and opposed by the Intervener;

AND the Board having considered the Application and the documents filed by the Applicant and Respondents, and Intervener, and representations made and evidence presented on behalf of the parties at a Hearing held on April 28, 1978;

AND the Board being of the opinion that the Respondent and Markland Works Limited carry on associated and related activities and businesses under common management and direction, including direction of the work force, and having therefore decided to treat the Respondent and Markland Works Limited as constituting one employer for the purpose of this Act;

AND the Board having been satisfied that more than forty percent of the employees of the Respondent and Markland Works Limited in an appropriate Bargaining Unit are members in good standing of the Applicant in accordance with Regulation 10 Governing Procedure of the Board;

AND the Board having been satisfied that the majority of the employees in the Unit determined by the Board to be appropriate who voted, cast ballots in favour of the Applicant Trade Union;

AND the Board having determined, for the reasons set out below, that it was unnecessary to consider allegations of unfair labour practices by the Respondent;

THEREFORE, the Labour Relations Board (Nova Scotia) does hereby certify the United Brotherhood of Carpenters & Joiners of America, Local 2165, New Glasgow, Nova Scotia, as the Bargaining Agent for a Bargaining Unit consisting of all employees of Can-Am Containers Limited and Markland Works Limited, Springhill, Nova Scotia, but excluding Office Employees and those persons excluded by Paragraphs (a) and (b) of Subsection (2) of Section 1 of the Trade Union Act.

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Reasons for Decision:

Before: I. Christie, Chairman and Board Members Messrs. D. Burchell, W. Tidmarsh, L. McKay and C. Parker.

Innis Christie, Chairman (for the Board):

Several of the issues raised may be dealt with briefly. First, as indicated in the preamble to our Order, the Board finds on the facts that the respondent company and Markland Works Limited fall squarely within the provisions of Section 20 of the Trade Union Act and should be treated as one employer, notwithstanding the fact that it was the employer himself who raised the point. Second, in our view the evidence establishes that at the relevant date Carolyn McLean was an "on call" part-time employee and should, therefore, not be included in the bargaining unit. Third, on the evidence the Board finds that Arnold Noiles and Jack Smith fall within Section 1 (2) (a) of the Trade Union Act and are, therefore, deemed by the Act not to be employees. Fourth, the Board finds that included in the bargaining unit are employees employed by the Respondent under the provisions of the Federal Government's Job Experience Training Program including Russell Hawker who was terminated before the plan ended but after the vote was taken.

The Board has considered the case of the intervener, Mr. Munroe, who had to be away when the vote under Section 24 of the Trade Union Act was conducted but we are not prepared to depart from the usual policy of the Board, which is to count only the ballots of those who attend and vote during the announced polling time of the vote conducted in accordance with Section 24 (1) and (2) of the Trade Union Act.

The Board is not persuaded by the facts of this case that it should depart from its normal policies with regard to the date for determining membership in the union as required by Section 24 (7) of the Trade Union Act and the date for determining the voters' list for purposes of Section 24 (1), (2), (5) and (8). Under Section 24 (7) the Board must determine the percentage of employees in the appropriate bargaining unit that the union had as members "at the date of the filing of the application for certification ..." The voters' list for purposes of Section 24 (1), (2), (5) and (8) is normally made up of employees employed on the date of Application and still employed on the date of the vote. We need not decide in this case whether, in fact, the Nova Scotia Trade Union Act allows the Board to use other than those dates, because on the facts of this case we are not persuaded that the makeup of the bargaining unit on the date of application was so unrepresentative that on the date of the vote we should, in any event, depart from our normal policy.

By letter dated March 23, 1978, the counsel for the applicant advised the Board that the position of the applicant was that the employer had contravened the Trade Union Act by committing unfair labour practices under Section 51 (1) (a) and (3) (e) and that the contraventions were so significant that the pre-hearing representation vote might not reflect the true wishes of the employees in the bargaining unit. The significance of this allegation derives from Section 24 (9) of the Trade Union Act, as recently amended by S.N.S. 1977, c.70, which provides:

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> 24(9) Where, in the opinion of the Board, an employer or employer's organization has contravened this Act or regulations made pursuant to this Act in so significant a way that the representation vote does not reflect the true wishes of the employees in the bargaining unit determined to be appropriate for collective bargaining, and in the opinion of the Board the applicant trade union, at the date of the filing of the application for certification, had as members in good standing not less than forty per centum of the employees in the unit, the Board may, in its discretion, certify the trade union as bargaining agent of the employees in the unit.

Since the enactment of S.N.S. 1977, c.70, by which a pre-hearing vote became the norm, the Board has had no occasion to set out explicitly its procedure for dealing with allegations of employer unfair labour practice in this context. In the course of the hearing, therefore, the Board ammounced that its procedure for dealing with an application for certification where there is such an allegation would be:
First, to hear and determine issues of the appropriateness of, and exclusions from, the bargaining unit applied for;
Second, to ascertain and announce whether or not the applicant trade union had achieved the necessary forty percent membership to entitle it to have the vote counted;
Third, to hear evidence and argument relating to the allegation that the Act or Regulations had been contravened;
Fourth, to count the pre-hearing vote in the normal way, in the presence of scrutineers representing the parties;
Fifth, if the applicant union wins the vote to order certification, or if the applicant union loses the vote to reconvene to hear further argument on the sole question of whether the employer had contravened the Act in so significant a way that the contravention could account for the margin by which the union has lost the vote;
Sixth, to adjourn to consider (a) whether the employer had contravened the Trade Union Act or Regulations made under the Act and, if so, (b) whether the employer had done so in so significant a way that the representation vote did not reflect the true wishes of the employees in the bargaining unit and (c) whether the Board should, in its discretion, certify the trade union as bargaining agent.

After the Board announced this procedure, counsel for the applicant union suggested it would be more expeditious to count the pre-hearing vote before hearing any evidence and argument with regard to the alleged unfair labour practices because if it turned out that the Union had won the vote it would then be unnecessary to deal with the allegations of unfair labour practice for purposes of Section 24 (9). The Board rejected this way of proceeding because it appears to present an open invitation to any applicant for certification to allege employer unfair labour practices which it may then try to prove, with nothing to lose, once it has been ascertained that the applicant has lost the vote and by what margin. However, the Board suggested that since the procedure it had announced was to some extent intended to protect the respondent employer against undue procedural advantage it would be prepared to

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accept the applicant's proposed deviation from the announced procedure if the respondent agreed.

In this case the respondent employer did agree to having the vote counted before any evidence of and argument on the alleged unfair labour practices were heard. As it turned out, the Union won the vote, which made it unnecessary for the Board to reconvene to deal with the unfair labour practice allegations.

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

P. F. Langlois
Chief Executive Officer