7-15-1977

McKay v Retail, Wholesale & Department Store Union, Local 1015

Innis Christie

Order of Certiorari, Quashed by Supreme Court of Nova Scotia, Trial Division, and an Order of Mandamus ordering Board to rehear.

563A

L.R.B. No. 2377
(Sec. 27)

LABOUR RELATIONS BOARD
NOVA SCOTIA

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

IN THE MATTER of Jean McKay; Norman Kavalak;
on behalf of Employees of
Henwood Foods Limited,
Springhill, Nova Scotia — Applicants

- and -

Retail, Wholesale & Department Store Union,
Local 1015, AFL, CIO,
P. O. Box 102,
New Glasgow, Nova Scotia — Respondent

- and -

J. A. Henwood,
President,
Henwood Foods Limited,
Springhill, Nova Scotia — Intervener

APPLICATION having been made to the Labour Relations Board (Nova Scotia) on June 2, 1977, pursuant to Section 27 of the Trade Union Act of Nova Scotia, for Revocation of L.R.B. No. 935, dated June 14, 1965, which certified the Retail, Wholesale & Department Store Union, Local 1015, AFL, CIO, as Bargaining Agent for certain employees of John Hunter Limited (Red & White Foodmaster), Springhill, Nova Scotia, the predecessor of the Intervener employer;

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

AND the Board having considered the Application and the documents filed by the Applicants, the Respondent, and the Intervener, and representations made and evidence presented on behalf of the parties at a Hearing held on June 28, 1977;

AND the Board having determined that the Bargaining Unit for which the Respondent Union was certified consists of the full-time employees of the Intervener;

AND the Board not having been satisfied either that a significant number of members of the Respondent Union have alleged that the trade union is not adequately fulfilling its responsibilities to the employees in the bargaining unit for which it was certified or that the Respondent Union no longer represents a majority of the employees in the Unit;

THEREFORE, the Labour Relations Board (Nova Scotia) does hereby dismiss the Application for Revocation for the following reasons.

Before: I. Christie, Chairman and Board Members Messrs. Harrington, Burchell, McKay and McIntyre.

Innis Christie, Chairman (for the Board):

The Respondent Union was certified by L.R.B. No. 935, made June 14, 1965, as Bargaining Agent for a bargaining unit consisting of "all employees" (except managerial and confidential personnel) of Jim Hunter Ltd., the predecessor of the Intervener employer. Subsequent collective agreements defined

the bargaining unit in the same terms. However, the practice of this Labour Relations Board at the time of the original certification order was not to include part-time employees in bargaining units and the evidence before the Board was that the Respondent Union, the Intervener employer and his predecessor have always bargained, recruited members and checked off dues under the collective agreement on the basis that part-time employees are not part of the bargaining unit in question.

The make-up of the bargaining unit is important because although the Application before us bears the signature of six of the total of ten employees in the Intervener's store four of them work only part-time. Of the two full-time employees who have signed the Application, one is a member of the Union and one is not.

This Application for Revocation was filed while the parties were involved in a strike which was legal under the Trade Union Act.

To these facts the Board must apply Section 27 of the Trade Union Act, which provides that where a trade union has been certified for not less than twelve months

> and the Board is satisfied that
>
> (a) a significant number of members of the trade union allege that the trade union is not adequately fulfilling its responsibilities to the employees in the bargaining unit for which it is certified; or
>
> (b) the union no longer represents a majority of the employees in the unit;
>
> the Board upon application for revocation of certification may order the taking of a vote to determine the wishes of the employees in the unit concerning revocation or confirm the certification in accordance with the result of the vote.

The Board has determined that "the bargaining unit for which [the Respondent] was certified" referred to in Section 27 (a) and "the unit" referred to in Section 27 (b) is the unit of full-time employees of the Intervener. That was the unit that the Nova Scotia Labour Relations Board undoubtedly intended to certify in 1965, and that was the unit that all parties concerned assumed had been certified. There is nothing before us that constitutes voluntary recognition of any broader unit.

Section 27 (a) requires only that a significant number of members of the trade union allege the trade union is not adequately fulfilling its responsibilities; nothing need be proved, although as this Board has stated in the past, such allegations must be made bona fide or "in good faith". The real issue here, however, is whether a significant number of members of the trade union have made the allegations in question.

Leaving aside the fact that the document filed with the Board by the Applicants may not be appropriate to bring these proceedings under Section 27 (a), our conclusion on the "bargaining unit" issue has led to the result that only one member of the trade union has alleged that the union is not adequately fulfilling its responsibilities. In the opinion of the Board this is not "a significant number of members". Notwithstanding the fact that the statute uses

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the plural "members", we are not holding that one member could never be a significant number of members, if there were a very small membership in the unit in question. Nor do we wish to be taken as establishing any precedent in percentage terms. We are simply ruling that in this context one in five members of the union is not "a significant number of members".

It was submitted on behalf of the Respondent Union that in determining what constituted a "significant number" the Board should take into account the fact that the employees were on a legal strike; that, although the Nova Scotia Trade Union Act does not limit revocation of certification during legal strikes as does the legislation of some other Canadian jurisdictions, the Board should exercise its discretion in determining what is a "significant" number under Section 27 (a) and its general discretion under Section 27 in a manner that recognizes the special vulnerability of unions in the strike situation. The Board agrees that it should not too readily order a vote on an Application for Revocation of certification during a legal strike.

Turning now to Section 27 (b); the Board having determined that the unit in question is a unit of the Intervener's full-time employees, there is no basis for suggesting that "the union no longer represents a majority of the employees in the unit." Only two of the six full-time employees signed the Application for Revocation. One of them was a union member and one was a probationary employee who had not joined the union. In the opinion of the Board in this context "represents" means "has as members", so in fact only one of the employees in the unit was represented by the union.

Employees who wish to be rid of a union must resign from membership if they are to take advantage of Section 27 (b). If they are unable to do so because of provisions of the union's constitution or because of the union security clauses in the collective agreement then as members of the union they can take advantage of the readily accessible provisions of Section 27 (a) to force a revocation vote.

In summary, the Board dismisses this application on the grounds (a) that only one member of the Union has alleged that the Union is not adequately fulfilling its responsibilities and one is not a "significant number" in this context, and (b) that the Union still represents a majority of the employees in the bargaining unit with which we are here concerned.

MADE BY THE LABOUR RELATIONS BOARD (NOVA SCOTIA) AT HALIFAX, THIS FIFTEENTH DAY OF JULY, 1977, AND SIGNED ON ITS BEHALF BY THE ACTING CHIEF EXECUTIVE OFFICER.

K. H. Horne
Acting Chief Executive Officer