Canada Industrial Relations Board Conseil canadien des relations industrielles

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Reasons for Decision

Teamsters, Local Union 973,

applicant,

and

Sanimax EEI Inc.,

respondent,

and

Robert Gignac,

interested party.

Board File: 27523-C
Neutral Citation: 2010 CIRB 488
January 19, 2010

The Canada Industrial Relations Board (the Board), composed of Ms. Elizabeth MacPherson, Chairperson, and Messrs. Graham J. Clarke and William G. McMurray, Vice-Chairpersons, considered the above-noted application.

Section 16.1 of the *Canada Labour Code (Part I–Industrial Relations)* (the *Code*) provides that the Board may decide any matter before it without holding an oral hearing. Having reviewed all of the material on file, the Board is satisfied that the documentation before it is sufficient for it to determine this application without an oral hearing.

These reasons for decision were written by Mr. Graham J. Clarke, Vice-Chairperson.

Parties' Representatives of Record

Mr. Stéphane Lacoste, for the Teamsters, Local Union 973;

Mr. Mario Parent, for Sanimax EEI Inc.;

Mr. Robert Gignac, on his own behalf.

I–Nature of the Application

[1] On May 26, 2009, the Teamsters, Local Union 973 (the Teamsters), filed an application for reconsideration with the Board pursuant to section 18 of the *Code*. In this application, the Teamsters challenged the Board's decision of May 15, 2009, to order a vote in relation to an application for revocation filed by Mr. Robert Gignac (Mr. Gignac).

[2] The Teamsters allege that the "absence of reasons" (translation) in the decision of May 15, 2009, violates natural justice. In addition, the Teamsters raise an error of law that casts doubt on the interpretation of the *Code*, as to whether the application for revocation filed by Mr. Gignac complies with the time limits set out in the *Code*.

[3] The employer, Sanimax EEI Inc. (Sanimax), concurs with the application for reconsideration and the Teamsters' arguments.

[4] In a letter dated June 10, 2009, Mr. Gignac alleges that the grounds raised by the Teamsters do not meet the requirements of section 44 of the *Canada Industrial Relations Board Regulations, 2001* (the *Regulations*).

[5] The panel that ordered the vote on May 15, 2009, issued supplementary reasons on July 10, 2009, in *Robert Gignac*, 2009 CIRB LD 2166 (*Robert Gignac (LD 2166)*). Subsequently, in a letter dated July 16, 2009, the Board gave the parties hereto the opportunity to file additional submissions after reading the reasons in *Robert Gignac (LD 2166)*, *supra*. The Teamsters and Sanimax requested that the Board proceed with the application for reconsideration but did not file any additional submissions.

II–Section 38 of the *Code*

[6] Sections 38(3) and (4) of the *Code* provide that employees covered by a voluntarily recognized collective agreement may apply to terminate the representation rights of a bargaining agent that has not been certified by the Board:

> 38.(3) Where a collective agreement applicable to a bargaining unit is in force but the bargaining agent that is a party to the collective agreement has not been certified by the Board, any employee who claims to represent a majority of the employees in the bargaining unit may, subject to subsection (5), apply to the Board for an order declaring that the bargaining agent is not entitled to represent the employees in the bargaining unit.
>
> **(4) An application for an order pursuant to subsection (3) may be made in respect of a bargaining agent for a bargaining unit,**
>
> **(*a*) during the term of the first collective agreement that is entered into by the employer of the employees in the bargaining unit and the bargaining agent,**
>
> (i) **at any time during the first year of the term of that collective agreement**, and
>
> (ii) thereafter, except with the consent of the Board, only during a period in which an application for certification of a trade union is authorized to be made pursuant to section 24; and
>
> (*b*) in any other case, except with the consent of the Board, only during a period in which an application for certification of a trade union is authorized to be made pursuant to section 24.
>
> (emphasis added)

[7] However, such an application in the case of a first collective agreement must be filed during the first year of its term. The key issue before the Board is whether a first collective agreement exists in this case.

III–The Facts

[8] In *Robert Gignac (LD 2166)*, *supra*, the Board summarized the relevant facts behind its decision to order a representation vote. According to the panel, the voluntarily recognized collective agreement was a first agreement:

> The Teamsters challenged the timeliness of that application, arguing that the collective agreement signed on June 12, 2008, had been negotiated in accordance with sections 44(3) and 50 of the *Code* and that it was not a first collective agreement.
>
> However, the following must be taken into consideration:
>
> - The Teamsters had held a provincial certification to represent all employees at **Sanimax PEI Inc**. since 1971. The last collective agreement entered into by Sanimax PEI Inc. and the Teamsters was signed on November 3, 2003, and expired on March 5, 2008. It covered **Sanimax PEI Inc**. employees working in Montréal.
>
> - On June 12, 2008, the Teamsters **and Sanimax EEI Inc.** entered into a voluntarily recognized collective agreement to represent the employees in **a bargaining unit that covered the employer's three plants,** in Québec, Montréal and Lac Dufault, as shown by the collective agreement produced in file no. 27133-C.
>
> - In the application for certification filed by the Teamsters on October 17, 2008, pursuant to section 24.1 of the *Code* (file no. 27094-C), the bargaining unit sought included the employees of all three plants of **Sanimax EEI Inc**.
>
> (pages 5–6)

[9] However, the Teamsters argue that the agreement in question was actually a renewal of a provincial collective agreement that had been in existence for close to 40 years, which now fell under federal jurisdiction as a result of a transfer of constitutional jurisdiction:

> 5- This matter is largely the result of the merger of the employer's business with that of what had until then been a related company, Sanimax PEI Inc. (formerly Paul & Eddy), for which the Teamsters had held bargaining rights for close to 40 years pursuant to certification by the competent provincial authority in Quebec;
>
> 6- This merger resulted in the employees of both companies being included in the broad intended scope of the Teamsters' certification, which was automatically transferred to the merged company under section 44(3) of the *Code*;
>
> 7-In fact, the Board is seized of an application for declaration of sale of business pursuant to section 44(3) of the *Code*, in file no. 26788-C;
>
> 8- The collective agreement entered into during the summer of 2008 by the Teamsters and Sanimax EEI Inc. was a mere renewal of the previous collective agreement entered into by the Teamsters and Paul & Eddy, an agreement that followed a long series of collective agreements starting in 1971;
>
> 9- Therefore, this collective agreement can in no way be a first agreement.
>
> (translation)

IV–Issues

[10] The Teamsters' application for reconsideration raises two issues:

a) Was there a violation of natural justice when the Board ordered a vote on May 15, 2009?

b) Did the Board commit an error of law that casts doubt on the interpretation of the *Code* by determining that the collective agreement between the Teamsters and Sanimax was a first agreement for the purposes of section 38 of the *Code*?

V–Analysis and Decision

A–Was there a violation of natural justice when the Board ordered a vote on May 15, 2009?

[11] The Teamsters argue that the Board ordered a vote without first taking into account the argument that the Teamsters had raised regarding the lack of timeliness of Mr. Gignac's application:

> 15- The decision of May 15 violates natural justice in that it does not expressly decide, or give any reasons whatsoever for the Board's *apparent* and *implicit* decision, to dismiss the Teamsters' argument regarding the lack of timeliness of the revocation application;
>
> 16- Nowhere in the Board's decision is there an express decision on this issue;
>
> 17- The Board merely proceeded as though it were dismissing this argument;
>
> 18- It is impossible for the parties to tell why the argument regarding timeliness was set aside or dismissed;
>
> 19- The Board's decision is therefore tainted by this total absence of reasons, which violates natural justice and undermines the Board's jurisdiction.
>
> (translation)

[12] The reconsideration panel is of the opinion that, in *Robert Gignac (LD 2166)*, *supra*, the Board provided the parties with a detailed explanation as to why it had ordered a vote in its letter of May 15, 2009. In addition, in its letter of July 16, 2009, the Board gave the parties the opportunity to file additional submissions following receipt of *Robert Gignac (LD 2166)*, *supra*. No further comments were submitted.

[13] The Teamsters have failed to persuade the Board that there was a violation of natural justice in these circumstances. At times, reasons for decision are delivered after the Board issues an order, as in this case. *Robert Gignac (LD 2166)*, *supra*, provided detailed reasons for the Board's decision to order a vote on May 15, 2009.

[14] The reconsideration panel is of the opinion that the Teamsters received sufficient reasons to allow them to understand the Board's original reasoning.

[15] This first ground is therefore dismissed.

B–Did the Board commit an error of law that casts doubt on the interpretation of the *Code* by determining that the collective agreement between the Teamsters and Sanimax was a first agreement for the purposes of section 38 of the *Code*?

[16] An application for reconsideration is not an appeal (see *Ted Kies*, 2008 CIRB 413). Section 44 of the *Regulations* sets out the parameters of such an application:

> 44. The circumstances under which an application shall be made to the Board exercising its power of reconsideration under section 18 of the *Code* include the following:
>
> (*a*) the existence of facts that were not brought to the attention of the Board, that, had they been known before the Board rendered the decision or order under reconsideration, would likely have caused the Board to arrive at a different conclusion;
>
> (*b*) any error of law or policy that casts serious doubt on the interpretation of the *Code* by the Board;
>
> (*c*) a failure of the Board to respect a principle of natural justice; and
>
> (*d*) a decision made by a Registrar under section 3.

[17] The Teamsters rely on section 44(*b*) of the *Regulations* and must therefore persuade the Board that the analysis of the *Code* implicit in the letter of May 15, 2009, and explicitly presented in *Robert Gignac (LD 2166)*, *supra*, is an error of law that casts serious doubt on the interpretation of the *Code*. In *Robert Gignac (LD 2166)*, *supra*, on page 7, the Board found that the collective agreement in question was a first agreement between the parties and for the bargaining unit in question:

> Contrary to what the union claimed in its submissions, the collective agreement signed on June 12, 2008, with Sanimax EEI Inc. was not a mere renewal of the collective agreement signed with Sanimax PEI Inc., as the bargaining unit covered was not the same: the collective agreement entered into with Sanimax PEI Inc. covered only the employees working in Montréal and the surrounding area, whereas the one signed on June 12, 2008, covered Sanimax EEI Inc. employees in the company's three plants, that is, in Québec, Montréal and Lac Dufault. It should also be noted that a majority of the employees in the bargaining unit covered by this new collective agreement were previously unrepresented employees.
>
> (page 7)

[18] In *Robert Gignac (LD 2166)*, *supra*, the Board did not accept with the Teamsters' argument that "[t]he collective agreement entered into during the summer of 2008 by the Teamsters and Sanimax EEI Inc. was a mere renewal of the previous collective agreement entered into by the Teamsters and Paul & Eddy." The reconsideration panel sees no error of law in the analysis cited above.

[19] The *Code* generally provides that the employees of a bargaining unit may seek revocation only during "open periods." However, the rules are more flexible in the case of voluntary recognition.

[20] In section 38(4)(*a*)(i), the *Code* gives employees from a voluntarily recognized bargaining unit a period of one year after a first voluntarily recognized collective agreement has been entered into to decide whether they wish to challenge the authority of the bargaining agent. The basic notion is simple. Unlike a situation where the Board certifies a bargaining agent, the employees covered by voluntary recognition are not necessarily consulted when an employer and a union negotiate voluntary recognition and a first collective agreement.

[21] The *Code*, which holds the wishes of employees as a fundamental principle, enables employees to decide for themselves whether they wish to be represented by a bargaining agent that their employer has voluntarily recognized.

[22] The Teamsters allege that the Sanimax PEI Inc. collective agreement was transferred to Sanimax following a sale of business, thereby automatically adding all Sanimax employees to the bargaining unit. Effects of a sale of business such as those suggested by the Teamsters are not automatic.

[23] If a question arises regarding a bargaining unit following a sale of business, the bargaining agent or the employer may apply to the Board for a review of the bargaining unit, pursuant to section 45:

> 45. In the case of a sale or change of activity referred to in section 44, the Board may, on application by the employer or any trade union affected, determine whether the employees affected constitute one or more units appropriate for collective bargaining.

[24] The process would also be subject to section 18.1 of the *Code*:

> 18.1(1) On application by the employer or a bargaining agent, the Board may review the structure of the bargaining units if it is satisfied that the bargaining units are no longer appropriate for collective bargaining.
>
> (2) If the Board reviews, pursuant to subsection (1) or section 35 or 45, the structure of the bargaining units, the Board
>
> (*a*) must allow the parties to come to an agreement, within a period that the Board considers reasonable, with respect to the determination of bargaining units and any questions arising from the review; and
>
> (*b*) may make any orders it considers appropriate to implement any agreement.

[25] A small bargaining unit composed of only two employees does not automatically include by operation of law a much larger group of non-unionized employees, especially when the group of non-unionized employees is in another location or plant. In fact, in such a situation, the Board may hold a vote to determine whether the non-unionized employees wish to be represented (see *Viterra Inc.*, 2009 CIRB 472, paragraph 35).

[26] A union may also ask the Board to determine whether the intended scope of an existing unit includes new employees following a sale of business (see *Viterra Inc.*, 2009 CIRB 442).

[27] Therefore, the Board does not see any error of law in the decision to order a vote. Mr. Gignac's application complies with the time limits provided for under sections 38(3) and (4) of the *Code*, given that less than a year has elapsed since voluntary recognition on June 12, 2008.

[28] Accordingly, this application is dismissed.

[29] This is a unanimous decision of the Board.

Certified Translation Communications

Elizabeth MacPherson
Chairperson

Graham J. Clarke
Vice-Chairperson

William G. McMurray
Vice-Chairperson