Federal Court of Appeal | Cour d'appel fédérale

Date: 20200227

Docket: A-49-19

Citation: 2020 FCA 56

[ENGLISH TRANSLATION]

CORAM: **BOIVIN J.A.**
DE MONTIGNY J.A.
RIVOALEN J.A.

BETWEEN:

BRINK'S CANADA LIMITED

Applicant

and

UNIFOR

Respondent

Hearing held at Montréal, Quebec, on February 25, 2020.

Judgment delivered at Quebec City, Quebec, on February 27, 2020.

REASONS FOR JUDGMENT BY: BOIVIN J.A.

CONCURRED IN BY: DE MONTIGNY J.A.
RIVOALEN J.A.

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REASONS FOR JUDGMENT

BOIVIN J.A.

[1] Brink's Canada Limited (the applicant) has brought an application for judicial review to set aside a decision rendered by the Canada Industrial Relations Board (the Board) on December 20, 2018, pursuant to which the Board certified Unifor (the respondent) to represent a group of the applicant's employees (*Unifor v. Brink's Canada Limited, LaSalle (Quebec)* (December 20, 2018), 32815-C; reasons rendered on February 19, 2019: 2019 CIRB LD 4102).

[2] The applicant is one of the main providers of armoured car transportation, ATM services, cash and coin processing, and other services to financial institutions and private or public organizations. In Quebec, the applicant's operations fall into three categories:

> - External operations, including pick-up and delivery; these operations are performed by drivers who go out on the road every day and do not generally leave Quebec.
>
> - Internal operations, including cash management, logistics, vaults, and storage; these operations are performed by employees who prepare packages for the road, consolidate deposits, and balance ATMs.
>
> - "Canada Trucking" / Brink's Global Services, including transportation inside and outside Quebec by drivers who pick up and deliver larger quantities than those picked up and delivered by "external operations" drivers.

[3] The respondent filed an application with the Board on November 1, 2018, pursuant to section 24 of the *Canada Labour Code*, R.S.C. 1985, c. L-2 (Code) in order to be certified as the bargaining agent for drivers who perform "external operations" and "Canada Trucking" drivers who perform their duties out of the applicant's office in LaSalle, Quebec. The applicant objected to the bargaining unit proposed by the respondent. It favoured a larger unit.

[4] The Board allowed the respondent's application for certification. Before this Court, the applicant challenges the Board's decision and essentially alleges that the Board made an unreasonable decision because it did not consider the relevant evidence submitted by the applicant.

[5] I agree with the parties that the standard of reasonableness identified in *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65, 59 Admin. L.R. (6th) 1 [*Vavilov*] is the standard that applies in this case. This Court must therefore examine the Board's reasons

with “respectful attention” (*Canada Post Corp. v. Canadian Union of Postal Workers*, 2019 SCC 67, 312 A.C.W.S. (3d) 545 at paragraph 31).

[6] It should also be noted that section 27 of the Code confers broad discretion on the Board, and the Board’s previous decisions have established various criteria that can be considered in determining whether a proposed unit is indeed appropriate for bargaining (see, generally, *Canada Labour Relations Board v. Transair Ltd.*, [1977] 1 S.C.R. 722, 9 N.R. 181 at page 739; *International Longshoremen’s and Warehousemen’s Union, Ship and Dock Foremen, Local 514 v. Prince Rupert Grain Ltd.*, [1996] 2 S.C.R. 432, 198 N.R. 99 at paragraphs 28, 32, 36; *Unifor v. Enbridge Pipelines Inc.*, 2018 CIRB 871, 2018 CarswellNat 1368 at paragraphs 27, 31 [*Enbridge*]; *Public and Private Workers of Canada, Local No. 5 v. Executive Air Craft Ltd.*, 2018 CIRB 893, 2018 CarswellNat 8658 at paragraph 28). In fact, determining whether a unit is appropriate for bargaining is undeniably a question of fact that must be assessed according to the particular context of each case. In this case, this Court must therefore show deference to the weight that the Board assigned to certain criteria in determining whether the unit proposed by the respondent was appropriate for bargaining.

[7] Contrary to the applicant’s claim, I am of the view that the Board rendered a comprehensive and nuanced decision that is justified, intelligible and transparent (*Vavilov* at paragraphs 15 and 95).

[8] The Board first provided context to the case and summarized the positions of the parties. It then described the law and the case law applicable to certification. It acknowledged that the

[TRANSLATION] "tasks of the employees included in the certification application, i.e. employees assigned to the transportation of valuables, are similar to those of the employees who work out of the other facilities in Quebec", but it made the following findings:

> - The employees included in the unit proposed by Unifor all pick up and deliver valuable assets, while the employees who work in internal operations, whom the employer wants to have included, do not perform that type of work;
>
> - The employees in the "Canada Trucking" / Brink's Global Services section all work out of the LaSalle facility, which partly differentiates the activities of that facility from those of the other facilities located in Quebec;
>
> - The Brink's employee handbook indicates that certain working conditions are specific to each branch.

[9] On the basis of the evidence before it, the Board was of the opinion that the unit proposed by the respondent was viable under the circumstances because (i) there were sufficient similarities in the working conditions of the employees in the proposed unit to establish a community of interest among them, and (ii) there was also a justification for excluding the "internal" employees from the unit because they perform tasks different from those performed by drivers on the road (Board's Reasons at page 9).

[10] In support of the applicant's argument that the Board erred in not certifying a larger unit, the applicant referred to *TVA Group Inc. v. C.U.P.E., Local 687*, 2000 CIRB 67, 2000 CarswellNat 3793 and submitted that [TRANSLATION] "for a number of years, the Board has favoured larger, more comprehensive units" (Applicant's memorandum of fact and law at paragraph 20).

[11] However, that decision is of no assistance to the applicant. As the respondent mentioned, it should be noted that that decision was rendered in a context of a review of existing units and

not in the context of an initial unionization—i.e., "in an open field situation"—as is the case here. The mere fact that the unit proposed by the applicant may be more appropriate or even ideal is not in itself sufficient to invalidate the certification process and negate the right of employees to bargain collectively with their employer (*Enbridge* at paragraphs 27, 29, 34). Moreover, the Board has already recognized that a unit limited to a particular geographic area could be appropriate for bargaining, even if the employer in question operates in several areas or locations (see, for example, *Enbridge* at paragraphs 31 to 32, 42; *CEP and Bell Mobility Inc., Re*, 2009 CIRB 486, [2009] C.I.R.B.D. No. 51 at paragraphs 12, 16, 19; see also the Board's Reasons at page 8).

[12] The onus was on the applicant to demonstrate why the unit proposed by the respondent was not appropriate for bargaining. After considering the applicant's arguments, the Board clearly explained the reasons why the arguments advanced by the applicant were insufficient. The Board identified a sufficient community of interest among the employees in the proposed unit and similar working conditions. Furthermore, there was no compelling evidence that industrial stability would be adversely affected. On the basis of the evidence in the record, it was open to the Board to conclude that the proposed unit was appropriate for collective bargaining.

[13] Finally, the new evidence that the applicant is trying to introduce is not admissible because the applicant, by doing so, is asking this Court to usurp the function of the Board when the role if this Court is to review the legality of the Board's decision. It is well established that evidence filed on judicial review is limited to the evidence that was before the administrative tribunal, in this case the Board, and no exceptions to this rule were determined to apply in this

case (*Delios v. Canada (Attorney General*), 2015 FCA 117, 472 N.R. 171 at paragraphs 42 to 43; *'Namgis First Nation v. Canada (Fisheries and Oceans)*, 2019 FCA 149, 305 A.C.W.S. (3d) 463 at paragraph 10).

[14] For all of these reasons, I would dismiss the application for judicial review with costs.

"Richard Boivin"
J.A.

"I agree.
Yves de Montigny, J.A."

"I agree.
Marianne Rivoalen, J.A."

Certified true translation
Janine Anderson, Revisor

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

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