Date: January 11, 2002
Docket: SH 173444

IN THE SUPREME COURT OF NOVA SCOTIA

Cite as: United Food and Commercial Workers International Union, Local 864 v. Saunders 2002 NSSC 7

BETWEEN:

United Food and Commercial Workers International Union, Local 864

Applicant

-and-

Paul Saunders *et al*, Larsen Packers Ltd., Labour Relations Board (Nova Scotia)

Respondent

DECISION

Heard: **At Halifax, Nova Scotia before the Honourable Associate Chief Justice Michael MacDonald on September 5th, 2001**

Written Release of Oral Decision: January 11, 2002

Counsel: **Gordon N. Forsyth & Monique DesRoches - UFCW**
Pink Breen & Larkin
Dean Smith - Labour Board
Paul Saunders - Self-represented
Ian Sullivan - Watching Brief - representing Employer

MACDONALD, A.C.J.:

[1] This is an application for certiorari and prohibition.

BACKGROUND

[2] Mr. Paul Saunders, an employee of Larsen Packers Ltd. has organized a drive to have his union, United Food and Commercial Workers International Union, Local 864 (UFCW) decertified. On August 9th of this year he filed the prescribed paperwork with the Respondent, Labour Relations Board (Form 6). His sworn statement includes the following complaints:

- The U.F.C.W. has not provided us with adequate representation (grievances etc. delayed)

- Refused to recognize our own elected in plant committees.

- Failed to respond positively to our demands. (May 18/01)

- Denied workers their rights according to contract. Misinformed workers on key labour practices.

[3] Mr. Saunders' application also purported to have the supporting signatures of approximately 225 fellow employees. These signatures are under the heading "The following is a list of people who support the motion to decertify the Local 864 United Food and Commercial Workers Union as bargaining agent for employees at Larsen Packers Limited Berwick." The Union challenges the validity of the decertification process and seeks a hearing before the Board to consider these challenges. Nonetheless the Board, based solely on the information filed by Mr. Saunders and the information filed by the employer as to the relevant workers (page 3 of the record), has arranged for an early pre-hearing vote. This procedure calls for sealed ballots that will be opened and counted only after the Union's challenge has been heard. It uses the so-called "double envelope" system. This process accords with the Board's policy on certification applications. The Union challenges this procedure and alleges that for decertification applications, the Board must first hear the Union's challenge before holding a vote. In other words, the Union submits that the Board has no jurisdiction to hold a pre-hearing vote. The vote is scheduled for tomorrow September

6th, 2001 and the Union therefore seeks relief in the nature of certiorari and prohibition. Specifically it asks this Court to set aside the Board's decision to hole a vote and to prohibit it from doing so until the Union's challenge has been heard.

SCOPE OF JUDICIAL REVIEW

[4] The issue before the Court is not whether the Board has the power to order a vote upon an application for decertification being filed. The Board under section 29 of the *Trade Union Act* (R.S.N.S. 1989, c. 475) clearly has the right to hold a vote upon the filing of a decertification application provided it is satisfied that certain conditions have been met. Section 29 of the *Act* provides:

> 29 Where certification of a trade union as a bargaining agent has been in effect for not less than twelve months and no collective agreement is in force, or where an application can be made pursuant to subsection (4) or subsection (5) of Section 23, 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 was 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 of the existing certification and may revoke or confirm the conertification in accordance with the result of the vote.

[5] The issue before me involves the Board's interpretation of Section 29 as to the timing of the vote. Specifically the Board interprets s. 29(a) as permitting a vote pre-hearing as long as it is satisfied that "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 was certified". When the issue involves the Board's interpretation of its enabling statute, the scope of judicial review is one of reasonableness. In other words, the issue becomes whether or not the Board's interpretation of s. 29 (allowing for a pre-hearing vote) is reasonable.

ANALYSIS

[6] The application to decertify has been made within three months of the expiration of the current collective agreement, therefore by virtue of s. 23(4) the Board may order a vote provided it is satisfied in this case that "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 was certified".

[7] In making its' submissions the Board refers the Court to the low threshold in meeting the criteria of s. 29(a). For example s. 29(a) refers to a significant number of members as opposed to a majority or otherwise. As well, s. 29(a) refers to a significant number of trade union members *alleging.* In other words the Board, at this stage, does not have to investigate the merits of the allegations, it need only be satisfied that the allegations exist.

[8] The Board, having reviewed Mr. Saunders' sworn application with accompanying list of people "who support the motion to decertify" and having received the employer information as to the identification of the relevant employees (pp 3 and 4 of the record) felt satisfied that s. 29(a) has been met. The Board also concluded that it could reach this conclusion without the need of a hearing and therefore interprets s. 29 as allowing a vote pre-hearing. In fact, the policy of holding pre-hearing votes in decertification matters was explained in an earlier decision of the Board (see L.R.B. No. 4518 Supplementary, **Trans Atlantic Preforms Ltd.**) where at page 2 the Board stated:

> We note, in passing, that because of the delays that ensured between the filing of the Application by the Revokers on August 18, 1995 (on the one hand) and the ultimate decision in this matter on July 14, 1997 (on the other hand) and because of extended delays in several other cases, the Board has developed a policy of holding 'quick votes' in revocation matters which mirror the times described in Section 25 of the Act for the holding of 'certification' votes. The main reasons for adopting a policy of quick, pre-hearing votes in revocation matters were, FIRSTLY, the difficulty in settling upon a "fair" voting constituency following an extended delay, and SECONDLY, concern that a 'participant' - employer or incumbent trade union - or - a hidden "non participant' - rival trade union - might seek an advantage though prolongation of a hearing.

[9] Having considered all the able submissions of counsel and having considered the record in this matter, I find that the Board's interpretation of s. 29 in this case is reasonable and should not be disturbed.

[10] In reaching this decision I have considered the Union's concerns that by holding a vote pre-hearing the Board may have the appearance of prejudging the matter and thereby at worst making the hearing meaningless or at best putting the onus on the Union to rebut the presumption of a valid application. I repeat that the s. 29(a) threshold is low. There need only be *allegations* by a *significant number of the members*. The merits of these allegations may be tested at a hearing. The issue of voluntariness can also be raised and addressed at a hearing as can the accuracy of the petition itself and the entire process. Thus the concerns, although not exhaustive, raised by the Union in its letter to the Board and considered by the Board at page 10 of the record can be addressed at a subsequent hearing. The Board, in other words, retains the discretion to either allow or disallow the application following a full and proper hearing.

[11] In reaching my conclusion, I have also considered the Nova Scotia Supreme Court decision of *Little Narrows Gypsum Co. Ltd, v. Labour Relations Board (Nova Scotia) and International Union of Operating Engineers, Local 721B, MacLean and Bennett (1977),* 20 N.S.R. (2d) 385. In that decision when considering a pre-hearing vote for a certification application under then s. 24 of *The Trade Union Act,* Chief Justice Cowan indicated that the Board has no jurisdiction to conduct a vote pre-hearing short of expressed statutory language. However, I find that this case is distinguishable from the case at bar. Holding a decertification vote as in the case at bar represents a much lower threshold than a certification vote under s. 24 of the *Act.* In the case at bar I accept Mr. Smith's submission on behalf of the Board that the low threshold set out in s. 29 may reasonably be met through the process that the Board has followed, namely through statutory declarations and affidavit evidence.

[12] The Union's application is dismissed without costs.

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Michael MacDonald, A.C.J.

Halifax, Nova Scotia