

April 19, 1994

To Interested Parties:

Re: Britco Export Packers Ltd. (the "Employer") -and- United Food
and Commercial Workers International Union,
Local 1518 (the "Union")
(Application for Certification - Case No. 18495)

(i) Nature of the Application

The Union applied for certification of employees at and from the Employer, based on membership evidence demonstrating greater than 55% support. The Employer said the membership evidence was flawed. It claimed certain employees were misinformed at the time they signed the Union membership cards.

After hearing the submissions of the parties, I ordered an investigation into the membership evidence. The resulting report was disclosed to the parties and written submissions were received in response.

Based on the investigation report, and after reviewing the submissions of the parties, I find that the bargaining unit applied for is appropriate; that the Union has the requisite support for automatic certification; and that the certification should therefore be granted.

(ii) Background

The Union applied for certification on April 6, 1994. The original Officer's report (the "first report") showed the Union had more than 55% membership support. The first report also indicated that concerns were expressed to the Officer by the Employer and certain employees regarding what employees were told when they signed Union cards.

A hearing was held on April 13, 1994. The result was an order for a further investigation into the membership evidence. The investigation took place at the Employer's place of business on April 14, 1994. The Officer's report of the investigation (the "second report") was disclosed

to the parties that day, with a request for submissions and replies to be completed by noon on April 18, 1994.

A representation vote was held on April 16, 1994. The ballots were sealed pending outcome of this decision.

The second report indicated three employees believed by signing the Union cards they would obtain the right to vote for union certification. All other employees, representing a majority of the proposed bargaining unit, understood what signing the Union card meant. That is, the Union intended to apply to be certified as their bargaining agent.

(iii) Issues

The Employer raised two issues at the hearing. Although it had no issue about the appropriateness of the bargaining unit applied for, it took issue with the inclusion of Audrey Vielfaure, a salaried secretary in the office. More importantly, it took issue with the membership evidence. The Employer said that during its organizing campaign, the Union misled some employees about what it meant to sign the Union card.

The Union took issue with Hamish Struthers, a supervisor, being included in the bargaining unit. On the larger issue, the Union claimed there was no basis upon which to question the membership evidence. The Union also advised it would be filing an unfair labour practise complaint against the Employer.

The Employer and the Union then agreed Vielfaure should be excluded from the bargaining unit. The Union advised it would take no further position at the hearing on the inclusion/exclusion of Struthers, as it made no difference to the membership support for the purposes of automatic certification. Therefore, the remaining issue was the validity of the membership evidence.

In its submission filed following receipt of the second report, the Employer says activities of the Union on April 13 and 14 interfered with the investigation and vote. It says the only way to determine the true wishes of the employees is by way of secret ballot vote.

Counsel for the Union submits I should certify the Union as bargaining agent for the unit applied for and cancel any representation vote.

(iv) Evidence at the Hearing

The first report stated in part:

The Employer expressed concerns over what employees were told when they signed union cards. Employees telephoned me regarding the same issue.

I directed the Employer to call evidence as to how it had knowledge of the employees' concerns.

Jim Doyle, General Manager, said it was he who had expressed concerns to the Officer. He testified he was approached and advised by Struthers that some work colleagues approached him and said they had signed Union cards with the understanding that they were signing for a vote on whether there would be a trade union or not. The conversation took place during the afternoon of April 7, 1994. As a result, Doyle called legal counsel and also prepared a memo dated April 8, 1994 to all staff. The memo read as follows:

Re: UFCW attempt to certify Britco

Most of you are aware by now that the UFCW has made application to certify the employees at Britco.

Based on information received from some employees, we believe that the UFCW has not completely disclosed to employees the nature of the certification process, or the consequences of signing membership cards.

The Labour Code says that if 55% of Britco's workers have signed union cards, the union will be automatically certified at Britco. If this occurs, there will not be a vote.

If 45 to 55% of Britco's workers have signed union cards, then there will be a vote in regard to certification.

If employees have been induced to sign membership cards based on a misrepresentation by the union, the Labour Relations Board has the power to investigate and to order a vote or dismiss the application. However, this evidence must be given by the employees directly to the Labour Relations Board. The employer is not allowed to conduct enquiries or influence you in anything you say to the Labour Relations Board.

Any complaints must be made to the Labour Relations Board prior to the hearing on Wednesday, April 13th. The investigating officer is Mr. Ken White. If you have any questions or further inquiries you can reach him at 576-0065 or call 660-

1300.

The first report indicates the Officer directed the employees who contacted him to attend the hearing. In the end, twenty-six employees representing a majority of employees in the proposed bargaining unit attended the hearing.

(v) The Second Report

The Officer indicates that he interviewed the majority of employees in the proposed bargaining unit. The employees were asked:

- 1) Did you sign an application card to join the UFCW?

If the employee answered in the affirmative, they were then asked:

- 2) What were you told by the organizer when you signed the card?

The Officer reported the following:

...Three employees told me that they believed that by signing the cards they thought that they would obtain the right to vote. At least two of the employees told me they experienced membership campaigns at other employers. Two of the three mentioned a \$5.00 signing fee.

The interviews with the other employees who signed cards, however, suggests that the employees understood the purpose, importance and significance of signing the card.

(vi) Positions and Argument of the Parties

The Employer takes the position that the membership evidence is flawed and I must order that the secret ballot vote be counted.

The Union's position is that the only question remaining after the investigation is whether on the date of the application for certification the Union had greater than 55% membership support in the proposed bargaining unit. If so, I should automatically grant the certification.

I will briefly set out the arguments of the parties made at the hearing, which relate to the representation vote. I will then set out the parties' submissions on the second report.

1) Argument at the Hearing

The Employer argued that Section 24(1) of the Code provides the authority to order a representation vote even where the Union has demonstrated greater than 55% membership support. However, the Employer conceded this authority was not frequently exercised under the present legislative scheme. It argued that if I found the Union had engaged in misrepresentation during its organizing drive, this was sufficient reason to order a vote. It said that the attendance of twenty-six employees at the hearing demonstrated there was a concern about the merits of the application for certification.

In reply to the Employer's argument, the Union said that the policy under the current legislative scheme favours its membership evidence. There were no revocations of membership filed. The fact that twenty-six employees arrived at the hearing was merely because the plant was closed on the day of the hearing.

The Union relied on *Crestar Food Products*, BCLRB No. B26/93, to say that Section 24(1) does not grant the right to order a vote. Rather, Section 23 provides a mandatory direction where there is greater than 55% membership support. Under the principles enunciated in *Plateau Mills*, BCLRB No. 87/76, [1977] 1 Can LRBR 82, there are only narrow circumstances in which a vote is ordered, and these are where issues of illegality arise. The Union urged there was only evidence that employees signed cards and none that would imply there was any misrepresentation, threat, and so on.

2) Submissions on the Second Report

The Employer argues that if there is any evidence calling into question the reliability of the membership evidence, this casts doubt about the true wishes of the employees. Therefore, I must order a count of the secret ballot vote. It urges that I apply the reasoning in *Haebler Construction Ltd.*, BCLRB No. B39/93, where the Board directed a secret ballot vote due to defects in the membership evidence.

The Employer says there are sufficient reasons here to count the vote. These reasons include: the three employees who reported they understood there would be a vote; the Union tactics on April 13 and 14; and the fact that twenty-six employees came to the hearing.

The Union's tactics the Employer refers to include circulating an information bulletin and also inappropriately attending at the Employer's place of business. It says these tactics were used to intimidate employees who might have had doubts about the Union campaign, into not communicating with the investigating Officer. The Employer says I should therefore find that the only way to determine the true wishes of the employees is by way of secret ballot vote.

The Union argues there is no evidence in the second report that discloses the Union communicated inaccurate or improper information. Therefore, there is no doubt cast on the validity of the membership evidence. In particular, the three cards should not be removed from the calculation of the Union's membership support.

The Union submits an alternative argument if I find the membership evidence with the three cards is questionable and cannot be relied on in calculating the membership support. It says if I remove the three cards from the count of membership support, there are still in excess of 55% of the employees in the bargaining unit who were members in good standing of the Union, on the date of application for certification. Therefore, I should grant the certification.

In reply, the Employer questions the Union's suggestion that the three cards be deducted from the membership evidence. It submits if there is any flaw in the membership evidence, a secret ballot vote is the only way to resolve the issue.

(vii) Analysis and Reasons for Decisions

I concluded and provided orally to the parties my decision and brief reasons in respect of the request of the Employer for a representation vote or further Investigation. I have reached further conclusions on the application for certification by the Union. Below, I set out my reasons separately for each decision.

1) Order for Investigation

The Board set out its policy on membership evidence in *Dencan Restaurants Inc.*, BCLRB No. B255/93 (Leave for Reconsideration of decision dated March 31, 1993), (1994) 20 CLRBR 94:

...Where the Board is satisfied that a *prima facie* case is made out that there may have been improprieties in the procuring of membership evidence such that the true wishes of the employees may not be evidenced by the membership cards, the Board will act quickly to resolve the issue either through further investigation, further hearing into the matter, or by requiring a representation vote to determine the true wishes of the employees. (p. 102)

In that decision the Board stated it would require a high degree of integrity and precision in the cards presented as evidence of membership in a union. The Board also confirmed that it would not require the "best evidence" about improprieties in a union's organizational campaign.

Rather, it might rely on circumstantial evidence to inquire or investigate further. However, the Board also stated that the form of action taken would be discretionary and depend on the seriousness of the allegations and on the strength of the evidence presented.

In the case before me the information in the first report and the evidence of the Employer, provided me with sufficient reasons to conclude there might be some improprieties in the membership evidence. I did not consider the attendance of the twenty-six employees at the hearing in and of itself to be relevant.

Therefore, the parties were advised I decided based on the evidence and submissions of the parties that the Employer had established a *prima facie* case putting the reliability of the membership evidence into question. I relied on the principles expressed in *Dencan Restaurants Inc., supra*.

I ordered an investigation into the membership evidence as soon as possible and advised the parties that a representation vote would have to proceed because of the time requirements under Section 24(3). The votes were to be double sealed.

2) The Application for Certification

In *Dencan Restaurants Inc.*, the Board analyzed the reasoning in *Plateau Mills, supra*, and confirmed that in most circumstances the Board will rely on the membership cards provided by a union as the only evidence of members' wishes. Only where there is a legitimate *bona fide* doubt established about the membership evidence will the Board conclude the membership evidence does not accurately represent the wishes of the majority of employees and order a vote: *Crestar Food Products, supra*. The secret ballot vote is the means the Board can test the true wishes of the employees. This will be done where there is serious doubt about the veracity of the membership evidence: *Haebler Construction Ltd., supra*. If after investigation or hearing, a panel is satisfied there are insignificant improprieties or none at all, so as to not cast doubt on the true wishes of the employees, the panel is still free to grant automatic certification: *Dencan Restaurants Inc., supra*.

The second report disclosed that three employees questioned the propriety of the information given when they signed the Union membership card. Based on the question asked, the summarized replies lead me to conclude the Union organizer let the three employees believe they would have a right to vote for a union.

Based on the principles in *Dencan Restaurants Inc.* I have a discretion to determine the results of this investigation in relation to the membership evidence. I find that the entire certification drive was not tainted. I am satisfied there may have been improprieties in the

organization campaign, as it relates to these three employees. Therefore, I disallow the impugned cards. However, I will continue to rely on the remainder of the membership evidence. I find there is no reason to cast doubt on that evidence as expressing the true wishes of the employees in the proposed bargaining unit. Indeed, all other employees interviewed indicated they understood the purpose for which the cards would be used. Furthermore, I am not convinced the Union activities, as alleged by the Employer, affected the Officer's investigation. Therefore, I will not grant the Employer's request to now count the secret ballot vote.

(viii) Conclusion

The Employer and the Union agree on the exclusion of Vielfaure from the bargaining unit. With that exclusion and if the membership evidence of the three employees is disallowed, there is still sufficient remaining valid membership evidence to find that at the date of application for certification, greater than 55% of the employees in the proposed bargaining unit are members in good standing of the Union.

Therefore, I conclude the Union's application for certification satisfies the requirements of Section 23(1) of the Code. The Union is certified as the bargaining agent for the unit applied for. I further order that the ballots cast in the vote on April 16, 1994 not be counted.

LABOUR RELATIONS BOARD

BARBARA J. JUNKER
VICE-CHAIR

Interested Parties:

United Food and Commercial
Workers International Union
Local 1518
#700 - 4211 Kingsway,
Burnaby, BC V5H 1Z6
Attention: Rob Cherniak

Shortt, Moore & Arsenault
400 - 789 W. Pender Street
Vancouver, BC V6C 1H2

Attention: Shona Moore

(Counsel for the Union)

Britco Exports Packers Ltd.
22940 Fraser Highway
Langley, BC V3A 4P6
Attention: Jim Doyle

Russell & DuMoulin
Barristers & Solicitors
1500 1075 W. Georgia Street
Vancouver, BC V6E 3G2
Attention: Mike Hunter

(Counsel for the Employer)

(A. Rees, IRO, Vancouver, BC)