

BRITISH COLUMBIA LABOUR RELATIONS BOARD

KGK CONSTRUCTION LTD.

(the "Employer")

-and-

UNITED BROTHERHOOD OF CARPENTERS AND
JOINERS OF AMERICA, 21 LOCALS

(the "Union")

PANEL:	Laura Parkinson, Vice-Chair John Newman, Member Hank Goodman, Member
COUNSEL:	Enid J. Marion, for the Employer Doug McCorquodale, for the Union
CASE NOS.:	28266 and 28404
DATES OF HEARING:	October 6, November 8, and December 5, 1995
DATE OF DECISION:	January 23, 1996

DECISION OF THE BOARD

I. NATURE OF APPLICATION

1 The Union applies in the name of 21 locals under Section 18 of the *Labour Relations Code* for certification of a unit of all employees working in construction in British Columbia except superintendents, clerical and sales staff.

2 The Employer asserts that the membership evidence cannot be relied upon as the employees had misunderstood what they were signing by reason of misrepresentations made by the Union. (Sufficient particulars to make out a *prima facie* case were required to be provided by the Employer in writing before that objection was permitted to be pursued.) The Employer advances a further objection to the appropriateness of the bargaining unit on the basis that the application cuts across classification lines and would include one individual who performs some clerical duties whereas the remaining employees performing those duties would be excluded. The Employer also advances a jurisdictional objection to the application as it was brought in the name of 21 locals of the Union, although proof of membership support was only tendered in one local, Local 1995.

3 The Union also applies under Section 6(1) and Section 9 of the Code alleging that the Employer has committed unfair labour practices in its questioning of employees about joining the Union. That unfair labour practice complaint was consolidated with the application for certification.

II. FACTS

Background

4 The Employer is a general contractor and construction management firm. It is presently engaged in two projects for the City of Coquitlam - the Places des Artes complex and the Cultural Centre. The mandate of the Employer on these projects is not to do any direct construction work, but to manage the various trades. The Employer does not have any contracts to engage in any direct construction activities on either site.

5 The size of the workforce of the Employer over the years has been sporadic, depending on the nature of the activities it is engaged in. Currently, there are four individuals who work in the office downtown. Apart from Ken Kidd, the President of the company, there is a project manager who is also a professional engineer, an administrative assistant who also functions as an interior designer and a receptionist who does typing, answering the phone, sending out mail and faxes and other clerical work. The Employer also has two site superintendents responsible for the day-to-day supervision of the two sites. Les Wilson is the superintendent at the Cultural Centre and Steve Huzyk is the superintendent at the other site.

6 Kidd testified that his company does not hire carpenters or other skilled tradespeople. From time to time, the Employer does hire first aid attendants and labourers to do site preparation work such as pumping water, clean up and garbage removal. At the time of the application, there were four employees within the scope of the proposed bargaining unit: Ron Desputeaux, Aaron Openshaw, Russell Corcoran and Bernard Spurrell.

7 Kidd testified that because of the size of the project at the Cultural Centre, he hired Desputeaux as a first aid and safety person to meet the requirements of the Workers Compensation Board. (The Employer does not employ a first aid attendant at the other project as the site superintendent has a first aid certificate that meets the requirements of the Workers Compensation Board.)

8 Openshaw is employed by the Employer to do miscellaneous labouring duties. He received his introduction to the Employer through his friendship with Desputeaux. Openshaw moves between sites depending on the requirements of the different projects. He is not a permanent employee with the company.

9 The two other employees within the scope of the bargaining unit also performed labouring duties on a casual basis. Corcoran worked between September 14 and

September 29 before leaving for Newfoundland shortly after the application was filed. Spurrell worked for a few hours on September 29 pumping water on site.

10 There are approximately 40 to 50 other workers on the Cultural Centre site who are employees of other employers or who are sub-contractors. At the other site, there are roughly 10 to 12 workers employed by others, although the numbers tend to fluctuate.

Organizing Campaign

11 On September 27 and 29, 1995, Gil Arnold, a Union organizer, attended at the Place des Artes site. A representative of the Employer had allowed the Union on site for the lunch hour to speak to employees of the other contractors on site. That permission was granted because of the policy of Coquitlam to have an open site; the only proviso was that the Union representatives not disrupt work.

September 27, 1995 Events

12 On September 27, Arnold spoke briefly with the Employer's crew while they were on their lunch break. The purpose of his attendance on the site that day was not to organize the employees of the Employer, but to meet with about 12 employees of one of the other contractors. However, while he was on the site on that occasion, Arnold spoke to two employees of the Employer, Openshaw and Corcoran. He introduced himself as a Union organizer and gave them his card. The conversation was a very brief discussion lasting approximately five minutes. He did not speak to them then about joining the Union, and did not directly offer them union membership. However, he did tell them what the organization he represented was and how it was attempting to reorganize the construction industry. Arnold recalls advising the employees that the Union was a construction union representing all kinds of construction workers. He indicated the Union could provide training and access to apprenticeship programs and advocacy in the case of wage theft. (One of the employees had indicated to Arnold that he was having trouble collecting wages from his previous employer.)

13 According to Openshaw's recollection of events, Arnold did not say at that time which Union he represented, although he did show him a copy of his card which bore the name of "Provincial Council of Carpenters". Openshaw recalls Arnold indicating on September 27 that he was there on the site to find people to sign for the Union. Openshaw recalls that discussion lasting approximately 10 to 15 minutes. He recalls mention was made that he could go to school at BCIT. He does not recall exactly what was said, but he understood that the Union would find him a job and get him an apprenticeship and give him a certain amount of money. There was also discussion about payment of a \$5.00 initiation fee for membership and about \$55.00 in dues.

Openshaw recalls that there was no mention of the Union hall in that first discussion with Arnold.

14 On September 29, 1995, Arnold returned to the site a second time during the lunch break. At that time, Arnold provided the cards to the employees of the Employer. In response to an inquiry by one of the employees, Arnold said to them that they should read the cards. Arnold testified that he directed employees to fill in the local number on the membership application form with "Local 1995". He explained to them once they signed cards they became members in good standing for 90 days. He recommended to the employees that they attend the Union hall when convenient as it was in their best interest to do so quickly in order to begin the waiting period for the benefit programs. In order to participate in the Union administered dental and medical benefit programs, individuals had to fill in further forms and pay the other dues and fees upfront.

15 Arnold also testified that he told the employees that the cards would be put in the safe and would be used for purposes of certification. The employees asked what certification was and he explained that if the Union has 55% or more support of the employees it would apply for automatic certification. (Arnold was only cross examined on whether or not he told the employees that he would apply for automatic certification that day; it was not put to him in cross examination that he had never told them that he would apply for automatic certification.)

16 At the second meeting with Arnold on September 29, 1995, Openshaw did not listen to what Arnold was saying to Desputeaux as he had already heard it before. He recalls being told the initiation fee was \$5.00 and there were three months of dues to be paid. He also recalls some discussion about the local.

17 Openshaw admits that he filled in the blanks on the membership card, but testified that he did not read the card when he signed it on September 29. He stated in his testimony that he did not need to read the card as he knew what was happening before he signed it.

18 Openshaw testified that Arnold did not indicate that he would file an application for certification. When asked in direct examination about whether he was told by Arnold that an application would be made, his answer was "with me - no, I do not believe he did".

19 Openshaw denies paying any money to the Union. However, the Union tendered in evidence a copy of a computer generated receipt for \$5.00 made out to Openshaw on September 30, 1995. Openshaw denies receiving any receipt.

20 In direct examination, Openshaw stated that Arnold told him that he would be in the Union automatically. In cross examination, Openshaw qualified that evidence by

saying that Arnold either told him that he was in the Union or on the board automatically just for signing the card.

21 When asked what his understanding was when he signed the card on September 29, Openshaw testified that he understood that he would get a fair wage, and the Union would find him another job as a carpenter and he would start his apprenticeship with the Union paying for him to go to school. He thought we would go to school for free and get paid \$24.00 an hour in wages from the Union.

22 Desputeaux's recollection of events of September 29, 1994 follows. He joined the other employees for lunch at about 12:15 p.m. when Arnold was already speaking to other employees. Desputeaux was only there for about four to five minutes while Arnold was there. Desputeaux was the last individual to sign a card.

23 Desputeaux did not ask which union Arnold was representing; he recalls there was something said about which Union it was, but he understood it was Local 1995. Desputeaux was shown a copy of Arnold's business card which reads "Provincial Council of Carpenters".

24 Desputeaux remembers some discussion about the half-price discount on first aid courses. There was also discussion about apprenticeship programs, but Desputeaux admits he was not actually listening intently since he was not interested in pursuing any such training. Desputeaux does not remember much else other than Arnold's reply to Openshaw's questions about the half-price discount on the first aid courses and the availability of apprenticeship programs. He also recalls something was said by Arnold about organizing the entire industry and an attempt to get all the trades in a new union to work under one umbrella. Desputeaux recalls some discussion about how much joining the Union would cost. He was told it would cost \$5.00 with three month dues payable in advance. He did not pay any money to the Union. Desputeaux does not recall Arnold asking him to read the membership card before signing it. He did read parts of it, but not all of it. He did not read the portion of the card that contains the wording required by Regulation 3. However, he did admit that he understood it was an application for membership.

25 Based on his previous experience with another union, Desputeaux thought there was a two or three step procedure to get into the Union. Desputeaux thought the first step was to sign the card and the next step was to go down to the Union hall to pay the dues. Desputeaux understood there was a two step process because Arnold said to him the next thing to do was to go down to the Union hall and pay the \$5.00 fee and the dues and sign the remaining forms. Desputeaux testified that he had no intention of pursuing any further the issue of membership in the Union as he was planning on returning to school next fall. He testified that he did not understand that by signing the card, he became a member. He thought if he wanted to pursue it, he could pursue it, but he elected not to do so. Desputeaux acknowledged in cross examination that he did not advise Arnold that he was only interested in membership in the Union for

possibilities in the future. He did not express those sentiments to him at any time during that exchange on September 29.

26 When asked why he had signed the card, Desputeaux replied that he thought it was a good deal to get into the Union by paying \$5.00. He testified initially that he saw joining the Union to be more of an opportunity for the younger employees to get into the Union with that reduced rate. He later acknowledged in cross examination that his signing of a card would not assist the younger employees from getting into the Union. He acknowledged he signed for himself if he wanted to pursue it in the future.

27 Desputeaux denies any mention by Arnold in that conversation on September 29 about the filing of an application for certification.

Contact with Employees after Filing of Application

28 The Union filed the application for certification on September 29, 1995. Arnold testified that after the application was filed, he had a brief lunchtime meeting with Openshaw on October 2, 1995. Arnold recalls advising him that if he experienced any difficulties or any threats to his job security after the application for certification to give Arnold a call right away. Arnold recalls Openshaw advising him that he would probably be stopping by the Union hall to sign forms for benefit programs and to pay his initiation fees and dues.

29 Openshaw denies having such a discussion with Arnold on that date. He stated in his testimony he does not believe he ever told Arnold he was concerned about losing his job. However Openshaw does acknowledge going to the Union hall the following day to fill out the forms for the health and welfare and pension plans. The forms filled out by Openshaw at the Union hall bear the date of October 3, 1995.

Employer Awareness of Application

30 Kidd was not immediately aware of the application for certification as he had returned from his vacation on October 1, 1995 and travelled to Calgary for a meeting on October 2, 1995. He was first aware of the application for certification on the morning of October 3 when he was asked by a representative of Coquitlam about the application. Kidd later returned to his office that afternoon to find the Industrial Relations Officer reviewing the company's payroll records.

31 Kidd's initial reaction to the application was that there must have been a misunderstanding as it appeared to him that the Union was seeking to certify carpenters which it did not employ.

32 On October 4, 1995 at about 12 p.m., Kidd advised Wilson that the Union had applied for certification. He asked that superintendent whether there had been any problems. Kidd also called Huzyk that same day to advise him of the application (although Huzyk had also been present at the meeting the day earlier when an inquiry had been raised about the application). Kidd testified that he gave no instructions to either superintendent about speaking with the employees about this matter. Neither superintendent was called by the Employer to testify.

Conversations with Superintendents

33 Desputeaux testified that on October 4, 1995, he found out that the Union was trying to certify the company from his superintendent, Les Wilson. On that occasion, Wilson asked Desputeaux whether he had signed a Union card. Desputeaux testified that he then asked his superintendent what certification meant.

34 Openshaw was also asked by the superintendent on the other site if he had signed a card. Openshaw told Huzyk that he had no idea what he was talking about. He recalled asking himself how did Steve know that he had signed a card.

Contact with the Union

35 After his conversation with Wilson, Desputeaux spoke with Arnold over the phone. In the first discussion he had with Arnold over the phone, Desputeaux recalls Arnold saying to him words to the effect that "I talked about this to you the other day about certifying the company and going Union". Desputeaux recalls expressing his displeasure to Arnold after he had found out that the Union was going to certify the company. Desputeaux testified that Arnold could not understand in that conversation why he was so upset.

Contact by Kidd

36 After speaking with Wilson and Arnold, Desputeaux was approached by Kidd. Kidd telephoned Desputeaux and asked him whether he had signed a card and whether anyone else had signed cards.

37 Kidd also phoned Openshaw. Prior to that conversation, Openshaw had never met Kidd. In his evidence, Openshaw was initially very reluctant to admit recalling any details of the conversation with Kidd. In direct examination, he testified that Kidd told him that he was going to court and he wanted an idea of what was going on. He testified that he freely told him what was going on. In cross examination, when posed with the question as to whether Kidd asked him whether or not he signed a card,

Openshaw evaded the question and answered that he did not know. In later questioning by the panel members, Openshaw acknowledged that Kidd did mention the application for certification to him and did discuss his signing of a card.

38 In his testimony, Kidd admitted that he questioned Openshaw about what the Union representative and he had discussed. Kidd asked Openshaw and Desputeaux if they understood the consequences of what they had done. According to Kidd, they freely indicated that they had no idea. In direct examination, Kidd testified that he pointed out to Desputeaux and Openshaw what certification meant from his perspective. He testified that he did not speak to either of the employees about the impact on their jobs or the result of the application. His purpose in contacting both employees was to find out what happened. Kidd later testified in direct testimony that he "pointed out to them what the ramifications were" of an application by the Union. In cross examination on the issue of his discussions with employees, Kidd could not recall the specifics of those conversations, although he allowed that he may have indicated his opinion that there had been a misunderstanding or mistake. Later in cross examination, he stated he was not in the habit of debating the company's perspective with employees; he just discussed the issue with them.

39 After his conversation with the employees, Kidd called the Union representative, Doug McCorquodale, to discuss the application. Kidd indicated to McCorquodale that the employees had not understood the significance of their actions.

Meeting with Union

40 According to Arnold, on October 4, Openshaw left a message for Arnold on his voice mail. That message indicated that the Employer was upset about the application and that Openshaw was worried that he might lose his job. Arnold spoke to Desputeaux and Openshaw on October 5 over the phone about setting up a meeting for later that day. Arnold advised them that he would bring the Legal Defence Coordinator and the Apprenticeship Coordinator along to the meeting to answer any questions they might have. Openshaw and Desputeaux never showed up for that meeting.

41 Desputeaux recalls a telephone conversation with Arnold about a week after he signed a card. It was after Desputeaux had been spoken to by the superintendent, but before he spoke with Kidd. Desputeaux recalls advising Arnold that as far as he was concerned he was not in the Union. After that first phone call, a couple of days later, Desputeaux called Arnold and left a message. Arnold called him back. Desputeaux testified that he expressed his displeasure again and Arnold requested to meet with him. After speaking with Arnold, Desputeaux decided not to attend that meeting and when asked later why he had not attended, he indicated that he did not want to speak to the Union again.

42 Openshaw also recalled speaking with Arnold on the phone after speaking with
the superintendent and Kidd. He denies indicating to Arnold that he was worried he
might lose his job. He cannot recall the details of that discussion as he was so mad at
that time.

43 Kidd testified that Desputeaux called him on October 5 about the call he had
received from the Union. According to Kidd, Desputeaux asked him what he should do.
(Desputeaux had not been questioned about this exchange in his testimony).

44 On October 5, Kidd spoke with Openshaw and Desputeaux about the hearing
the next day before the Board. He advised him then that they did not have to appear at
the hearing on the application for certification. Desputeaux was later asked by Kidd to
come down to the first day of the hearing at the Board on October 6. Kidd had called
him to request his attendance and had also asked him to contact Openshaw.
Desputeaux was at work at the time and he received his full pay for that day, including
the time he was in attendance at the Board. Kidd testified that he did not make them
any promise of any benefit if they attended the hearing or threaten them if they did not.
He did not discuss with them at the time whether or not they would be paid for their
attendance.

45 Desputeaux also testified that, after speaking with other employees on the site,
he found out that if the Union came in on the site where he was working he would be
paid at the first year apprentice's level with a dramatic cut in pay. Desputeaux also
testified that he spoke with Openshaw and told him that the rates might go down if the
Union got it.

46 At the initial hearing before the Board, Desputeaux inquired about revoking his
membership, but was advised by a representative of the Board that revocations made
at that time would not be effective.

Scope of Desputeaux's Duties

47 In direct examination, Desputeaux testified that he was primarily a first aid
attendant, secondarily an office clerk and if need be, he performed a "little bit" of
general labour, such as clean-up of the site. The examples he offered of his clerical
duties included delivery of site memos, receiving and putting in order faxes, answering
the phone, cleaning up the office and doing some photocopying. In cross examination,
Desputeaux acknowledged that he was a first aid attendant and that was the reason he
was hired. He testified that everything after first aid was secondary. According to Kidd,
the reason for hiring Desputeaux was that he had worked for the company previously
and the client specifically requested the company to retain his services. Kidd
acknowledged that Desputeaux's primary responsibility is to deliver first aid at the Place
des Artes site. Kidd testified that Desputeaux's duties were more general clerical than

construction *per se*. The clerical duties Desputeaux performed which Kidd identified were doing the mail and handling the paperwork.

48 Arnold testified about his observations of Desputeaux working as a labourer on three occasions when he visited the site. On those occasions he saw him assisting the carpenters with layout, carrying tools, shovelling and giving signals. Arnold observed Desputeaux for about five minutes on September 27 before going on to the site and again on September 29 for about five to 10 minutes. The week following Arnold also observed Desputeaux from the perimeter of the site helping with layout for about a half an hour, holding a spray paint can and the end of a tape. Arnold observed him from about 100 feet away through a chain link fence.

III. ARGUMENT

49 The Employer submits that the unit sought is inappropriate since there is an overlap between clerical and labourer duties. The Employer argues that Desputeaux performs first aid, labourer and clerical duties. In the Employer's submission, his clerical duties are an on-going and regular part of his position. Since an employee may be required to perform both clerical and labourer work, the proposed unit is inappropriate as it cuts across classification lines: *Island Medical Laboratories Ltd.*, BCLRB No. B308/93 (Leave for Reconsideration of IRC No. C217/92 and BCLRB No. B49/93), (1993), 19 CLRBR (2d) 161.

50 The Employer argues that the Union organizer engaged in a fundamental misrepresentation on the effect of signing a membership card which renders the membership invalid: *G.B. Mecanique Ltee*, BCLRB No. B196/94, (1994), 23 CLRBR (2d) 76. The Union organizer represented that there was a two step process which involved the signing of the card as one step, and paying the required fees and filling out the forms at the Union hall as the second step. The Employer argues the employees understood that they had to complete the forms and pay the money in order to complete the process; the employees did not believe that they had joined the Union since they chose not to complete the steps of obtaining membership. The Employer argues the employees also understood that they were being offered an opportunity to gain access to the associated benefits of union membership, such as apprenticeship and training programs. The understanding of the employees was that the purpose of the membership cards was to get into apprenticeship programs paid for by the Union and to have access to guaranteed work opportunities with other employers, not for purposes of certification with this Employer. The Employer also argues that employees were never told that the application would be brought in the name of other locals of the Union.

51 In relation to the conflict in the evidence between Arnold and the two employees, the Employer suggests that the recollection of the employees is more likely to be accurate as they only had the one conversation with Arnold that day, whereas Arnold

spoke with many employees that day on a multitude of issues. The Employer also points to the evidence that Desputeaux testified he did not know what certification meant. The Employer argues that, even if Arnold's testimony is true that he told them he would apply for certification, these unsophisticated employees did not know what that term meant. The Employer maintains that the Union has an obligation to ensure that the information it provides is accurate and clear.

52 The Employer argues that the two membership cards in the name of Openshaw and Desputeaux are tainted and should be rejected as not reflecting the true wishes of those employees: *Royal City Taxi Ltd.*, BCLRB No. B447/94 (Leave for Reconsideration of BCLRB No. B266/94). As a consequence, the Employer argues that there may be insufficient evidence to support an application for certification. The Employer asks the Board either to dismiss the application, or in the alternative, to order a representation vote to determine the true wishes of the employees: *Dencan Restaurants Inc.*, BCLRB No. B255/93, (Leave for Reconsideration of Decision dated March 31, 1993), p. 9.

53 On its jurisdictional objection, the Employer argues that the Union has tendered no membership support in any of the other locals who have applied for certification, apart from Local 1905. The Employer notes that the application was not brought as a poly-party application under Section 20.

54 The Employer also opposes the multi-local application brought by the Union on the basis that it would grant sweeping representational rights to a Union that is seeking to step outside its traditional craft jurisdiction. The Employer argues that it would be inappropriate to allow a multi-union certification in the absence of membership support in more than one union. The Employer relies on *Britco Structures Ltd.*, BCLRB No. 295/83, (1983), 4 CLRBR (NS) 5, as authority for the lack of jurisdiction in the Board to certify more than one local union when the membership evidence submitted by the applicants relates to only one local union. The Employer maintains that position despite the Board's practice regarding certificates granted to this Union set out in *Thomas Lambert and Associates*, BCLRB No. 129/85. The Employer submits that the *Lambert* decision is distinguishable as it dealt with a standard craft certification as opposed to an all-employee certification.

55 The Employer further argues that the application could not succeed under Section 20 given the absence of membership support in more than one union. The Employer argues that the requirement in Section 20 that the unions "have together" sufficient membership to sustain an application is not satisfied. Although acknowledging that the *Britco* decision is to the contrary, the Employer argues that an amendment to the identity of the union would be a substantive amendment and should not be allowed.

56 Lastly, the Employer asks that the unfair labour practice be dismissed as unfounded. It argues that it is not an employer who is adverse to the Union and points

to the fact that it allowed the Union to come on to the site and speak to employees of the other employers. The Employer further argues that Kidd's conduct did not cause employees to change their minds about the benefits of unionization. Kidd was, perhaps unwisely, trying to find out what was happening. He did so in a forthright manner, but he did not engage in any coercive or intimidating behaviour. Both employees testified that they had no fear that they would lose their job. The Employer argues that it is entitled to speak to employees about matters related to its business.

57 The Union submits that the reason for the exclusion of clerical staff in its proposed bargaining unit is to exclude the group of office workers in the office downtown who do not share a community of interest with the other workers. The Union argues that clerical work involves more than the occasional answering of the phone and the sending of fax messages. The Union argues that Desputeaux is not a clerical worker merely because he answers the telephone occasionally. In its view, his primary function is first aid and labourer duties.

58 The Union replies to the assertion of misrepresentation by arguing that no fraudulent or illegal tactics were used by its organizer. It also says it did not engage in any coercion or offer any inducements.

59 The Union argues that when Openshaw and Desputeaux signed cards, their willingness to be members was not conditional. The Union notes that, on the evidence of Arnold, the employees were advised at the time of signing that signing the cards made them members in good standing for three months. While Arnold encouraged them to fill in the forms, the reason for that recommendation was so that the waiting period for the benefit programs would begin to run.

60 The Union emphasizes that the employees were in favour of the Union up until the time Kidd returned to town and began to question the employees. The Union says the circumstances reveal a change of mind beginning with Kidd's involvement in the employees' decision to join a union. The Union notes the initial enthusiasm of the employees lasted until both employees were approached by the superintendents and by Kidd inquiring whether they had signed cards or whether others had done so. The Union submits that after those conversations, the tables were turned. The Union's position is that because of the Employer's involvement, the employees' desire to join a union cannot be demonstrated through a secret ballot vote.

61 The Union argues that the reason why the Union was allowed on site to speak with the employees was the policy of Coquitlam requiring an open site, rather than this Employer's open minded approach to unionization.

62 In reply to the Employer's objection to the multi-local application, the Union argues that the Board and its predecessors have given the authority to the Provincial Council of Carpenters, which consists of the 21 locals, as the bargaining agent. The

Union asserts that long standing practice in regard to applications for certification by the 21 locals has been for both craft and all-employee certifications.

63 The Union argues that the Board in *Thomas Lambert and Associates, supra*, has accepted the practice of multi-local certifications in the absence of membership support in more than one local. The Union argues that its reason for applying for a multi-local certification is that it avoids future difficulties in supplying Union labour to an employer who may later move around the province. In the Union's submission, geographical certifications for the construction industry serve a labour relations purpose. The mobile nature of construction requires provincial geographical certifications. When an employee joins a local union, that individual is a member of that local until that member voluntarily transfers, but the bargaining agent always remains the same, the Provincial Council of Carpenters.

64 The Union argues that the *Britco* decision, *supra*, is distinguishable as the applicants were industrial locals. According to the Union, the Provincial Council of Carpenters has never been the bargaining agent for the industrial units. In this case, the applicants are the construction locals which organize on a pattern different from the industrial units. As this Employer is a construction contractor, it is appropriate for the Union to follow its pattern of organizing through a standard geographic unit.

65 At the hearing, the Union argued that if this application should have been brought under Section 20, its failure to indicate that the application should have been properly brought under Section 20 should not be fatal and relief should be available under Section 156 of the Code from this technical irregularity. In a subsequent submission, the Union retreated somewhat from its request for an amendment to reflect an application under Section 20. In its initial written submission, the Union argued that on closer examination, Section 20 is intended for trade unions with different parent organizations. In the alternative, it argued that Section 20 should not act as a bar to the certification and any necessary amendment to correct the application would be merely procedural, and not substantive: *Island Energy Inc.*, BCLRB No. B159/95. In its final written submission, the Union withdrew its request for an amendment.

66 In response to the Employer's submission on the appropriateness of this Union organizing beyond its traditional craft lines, the Union argued that *Cicuto & Sons Contractors Ltd.*, IRC No. C271/88 (Reconsideration of BCLRB No. 52/87), permits a craft union to apply for an all employee unit.

67 In relation to its unfair labour practice complaint, the Union argues the Employer's conduct in questioning the employees about joining a union is in violation of Section 6(1) as it amounted to unlawful interference in the formation of the Union. The Union also asserts that the questioning of the employees had the effect of intimidating and coercing the employees contrary to Section 9. As for the Employer's claimed defence of free speech, the Union notes that even otherwise innocuous comments which may seem harmless to an outsider may take on a different importance when

voiced by management to employees: *Forano Limited*, BCLRB No. 2/74, [1974] 1 Can LRBR 13, p. 18.

IV. ANALYSIS

68 There are four issues to be addressed:

1. Whether the unit is appropriate for collective bargaining because of the fact of shared clerical duties?
2. Whether the membership evidence is tainted by any misrepresentation made by the Union?
3. Whether the Union may bring an application for certification in the name of a number of 21 locals when it has tendered membership support in only one local?
4. Whether the Employer interfered with the formation, selection or administration of the Union or intimidated or coerced the employees when questioning them about signing of membership cards?

We will deal with each of the issues raised in turn.

A. Appropriate Bargaining Unit

69 The Employer challenges the appropriateness of the bargaining unit on the basis of the overlap in clerical duties between the office staff and Desputeaux. We accept the Employer's statement of law based on *Island Medical Laboratories, supra*, that the Board will generally not certify a unit in which an employee may be both in or out of the unit, depending upon the duties performed. However, the mere fact of some overlap in job functions does not necessarily render a unit inappropriate as the nature and extent of any overlap in duties is relevant: *Ely Publications Ltd.*, BCLRB No. B401/94, p. 19.

70 On the evidence, we find that Desputeaux is a first aid attendant who has some additional labouring responsibilities as needed and who performs some clerical tasks at the construction site. We note Desputeaux's description of his own primary role as a first aid attendant in cross examination was quite telling of his own identification of his status. We find the Employer's evidence of the scope of his clerical work to be overstated. We also note the evidence of Arnold that on the three occasions he was on site and observed Desputeaux working he was engaged in labourer's duties.

71 Desputeaux may perform some similar functions to some of the clerical duties performed by the receptionist in the office downtown, but none of the shared duties may be characterized as his core responsibilities. That overlap does not go to the core abilities of the employee, but rather is limited to the periphery of his duties. Answering phone calls and doing some filing and faxing of paperwork does not fundamentally alter the character of Desputeaux's primary employment as a first aid attendant and labourer. Equally, none of these shared duties is performed to such an extent that the essential distinction between the excluded office employees and the labouring employees who work at the construction site is blurred in any significant way: *Ely, supra*. The clear division of the core duties among the office staff in the downtown site and those on the construction sites remains: *United Used Auto & Truck Parts Ltd.*, IRC No. C130/89, p. 11.

72 As any "cross-over" in duties does not involve the core functions performed by Desputeaux, we are satisfied that a rational and defensible boundary can be drawn around the employees within the proposed unit. The objection to the appropriateness of the bargaining unit is rejected.

B. Alleged Misrepresentation

73 We now turn to a consideration of the Employer's allegations of misrepresentations about the effect of signing a card. The Employer's objections are based on the employees' evidence that they were not told that the Union was seeking to certify the Employer and they thought that signing the card would entitle them to go to the Union hall for other job opportunities and to gain access to apprenticeship programs and subsidized training. The Employer also maintains that the employees understood there was a two step process to join the Union which they did not complete.

74 We begin our analysis of this issue by noting that the membership cards contained the mandatory wording required by Regulation 3. The purpose of the requirement in that regulation for that wording is to ensure that the employee is aware of the significance of membership in a union: *Dencan Restaurants Inc.*, *supra*, p. 4. The assumption of the Board is that signed membership cards which meet the requirements of Regulation 3 reflect the true wishes of the employee signing them: *Midway Tire Limited*, BCLRB No. B311/94, p. 7.

75 With that assumption, we turn to an assessment of the evidence to determine if there were any misrepresentations made to the employees that would draw into question the validity of the membership cards. We are faced with evidentiary conflicts on what representations the Union in fact made on September 27 and 29. Openshaw and Desputeaux directly contradict Arnold on the issue of whether or not they were told on September 29 that the Union would apply for automatic certification if it obtained more than 55% support. In light of that conflict, we are required to make factual judgments as to what was actually said on those two occasions and will apply the

principles set out in *Faryna v. Chorny* (1951), 4 W.W.R. (NS) 171; 2 D.L.R. 354 (B.C.C.A.).

76 On the aspects of the evidence which involve issues of credibility, we have applied the principles articulated in *Faryna*. We have considered the credibility of all of the witnesses in light of the usual factors, including their demeanour at the hearing, their ability to acknowledge facts which may be detrimental to their positions, and their general ability to recall past events and incidents as reviewed in light of all the circumstances of the case.

77 We have also considered the Employer's argument that the evidence of the employees should be preferred as they only had the one conversation about the issue, whereas Arnold spoke with many employees from different employers on a variety of issues that day. The Employer argues that it is more probable that the employees would remember the circumstances of that single exchange with greater clarity. However, in these circumstances, we cannot accept that argument. Both the evidence of Openshaw and Desputeaux lacked precision. As they could only vaguely recall fragments of the exchange with Arnold, we do not find their ability to recollect was superior to that of Arnold. In fact, their ability to recall dates and details was demonstrably inferior to that of Arnold. As a consequence, where the evidence of Arnold is in conflict with the evidence of the two employees, we prefer the version offered by Arnold. As we find on the evidence that the employees were told that the Union would apply for certification, we cannot accept the argument that the employees were led to believe that joining the Union bore no relationship to certification of this Employer.

78 As for the argument that there were representations made that the process for joining the Union was a two step process, we find that assertion directly contradicts the evidence of Arnold that he told the employees that they were members in good standing for 90 days and the evidence of Openshaw that he was told by Arnold that he was in the Union or on the Union board automatically just by signing the card. Again, for the reasons given above, we prefer the evidence of Arnold. We also do not find Desputeaux's evidence that he did not understand that he had joined the Union to be credible. As another panel of the Board has remarked, it is hard to understand how an individual could sign a membership application without knowing that the card gave him or her union membership: *Lordco Parts Ltd.*, Letter Decision BCLRB No. B94/95. In any event, whether or not he understood that by signing that card he was making a final commitment to the Union on membership, his misunderstanding of the purpose of signing the membership card was not the result of any misrepresentation made by the Union. His belief that he had not joined the Union because he had not gone down to the Union hall to fill out the remaining forms was a misapprehension on his part, not the result of any representation made by the Union. We do not find any objective nexus between the conduct of the Union organizer and the misunderstanding on the part of the employee. We find that he did sign the card knowing the nature of the transaction and aware that by so doing he was joining the Union.

79 Although we do not find Desputeaux's evidence to be persuasive, even if he sincerely believed that he had only initiated provisional membership in the Union, his belief to the contrary is irrelevant for purposes of the Code. The Board has previously rejected a subjective analysis in considering the validity of membership evidence: *C-Tron Systems Corp.*, BCLRB No. B39/95, and *Lonsdale Hotels Inc.*, BCLRB No. B130/95 (Leave for Reconsideration of No. B459/94), p. 8. The test for determining the acceptance of a membership card is not that of an employee's sincere belief. Rather, the Board should look at the objective evidence before it, not the subjective beliefs of the individual. If an employee knows the nature of the transaction, and if the signing of the membership card is voluntary, then absent fraud or misrepresentation, the employee's subjective reason for signing the card is not a relevant factor to consider.

80 The Employer takes further objection to the Union's offer of a discount on first aid training courses. While it does not go so far as to argue that offer is an improper inducement, it argues that there was a material misrepresentation that rendered the membership cards conditional. However, in similar circumstances, the Board has found a union's offer of the availability of reduced costs for training programs to be in the nature of union campaign promises and representations permissible under the Code: *North Shore Home Support Services Society*, Letter Decision BCLRB No. B366/95 (Leave for Reconsideration of BCLRB No. B307/95), p. 5.

81 We can also find no misrepresentation on this ground. There is no dispute that joining the Union would offer the employees an opportunity at access to apprenticeship and training programs. While Desputeaux and Openshaw may have had second thoughts after signing cards on the value of the benefits for them of Union membership for apprenticeship and training opportunities, there is some responsibility on employees to consider carefully and research, if necessary, what is being offered: *The Lutheran Senior Citizens Housing Society (Zion Park Manor)*, BCLRB No. B171/93, p. 8.

82 In summary, taking the Employer's case at its best based on our findings of fact, the evidence reveals only that there was a misapprehension on the part of the employees. However, we find that misapprehension was not reasonably attributable to anything said by the Union organizer. Any confusion was the result of the employees' own misconceptions. The employees may have misinterpreted the statements made by the Union organizer, but we cannot conclude on the basis of the evidence before us that the Union organizer mislead these employees. Whatever inferences the employees may have drawn from the comments made by the Union organizer, their views as to what those comments meant are not relevant: *Lordco Parts Ltd.*, *supra*.

83 We consider the present case to be a classic illustration of a change of mind of employees. Regulation 4 permits employees to revoke their membership if they have changed their mind since signing the card, but it must be done in a timely manner. No such timely revocation was made in this case. We find this ground of objection by the Employer falls within the category of after-the-fact challenges to otherwise valid

membership evidence. As the allegation of misrepresentation is not made out, we do not find the membership evidence is tainted.

C. Multi-Local Application

84 We turn next to the Employer's jurisdictional objection founded on the multi-local nature of the application and the fact that membership evidence was tendered in only one local.

85 As the Union argues, there is a longstanding tradition of certification of multi-local units. The pattern of certifications of this Union has been described by the Industrial Relations Council in *Commonwealth Construction Company, et al.*, IRC No. C204/88 (Reconsideration of No. C107/88), as follows:

The local unions are all affiliates of the Provincial Council. That organization was chartered by its parent organization, the International Union, and has, for many years, applied for certifications and conducted negotiations with employers on behalf of its affiliates in the Province.

* * *

The long-standing practice of the Provincial Council is to make applications for certifications on behalf of all of its affiliates notwithstanding that most were not directly involved with the particular construction employer or project named in the application. Provided they met the requirements of the statute, applications made in this manner in the past were routinely sanctioned by the Council's predecessor. The affiliates thus effectively achieved province-wide certifications with respect to any employer named in a certification order. (pp. 2-3)

86 As the Union argues, there is a longstanding tradition of certification of multi-local units. In the original panel's decision in *Commonwealth Construction*, dealing with a certification following the merger of two of the locals, the Council stated:

The application for certification by the 26 Locals met the requirements of the Act and a representation vote was ordered. Finally, in the future reference to the construction locals of the Provincial Council of Carpenters will be referred to as the United Brotherhood of Carpenters and Joiners of America, Locals Nos. 452, 513, 527, 872, 1081, 1237, 1251,

1346, 1370, 1540, 1598, 1638, 1696, 1719, 1735, 1812, 1882, 1907, 1998, 2068, 2300, 2458, 2493, 1736, 3214 and 3275. (p. 3)

87 An exception to that practice of certifying multi-local units of the Union arose in *Britco Structures Ltd., supra*. In that case, the employer argued that the Board lacked jurisdiction to certify the locals when the membership evidence submitted related to one local only. The Board adopted that argument on the basis of the necessity to ensure that employees are certain of the organization seeking to become their bargaining agent:

Turning to the question of whether the Carpenters can succeed on their "multi-local" application in light of the fact that all their membership evidence relates to Local 1928, in the present circumstances we find that it would be inappropriate to allow the application to proceed on that basis. The Carpenters, it must be noted, have not applied pursuant to s. 39(5)....

* * *

Rather, this application attempts to use membership evidence in one local in order to effect a result similar to that which could be achieved in certain cases under s. 39(5). (pp. 9-10, CLRBR)

After reviewing Ontario authorities which dealt with the issue of employees' right to certainty regarding the identity of the bargaining agent and which required membership evidence on its face to relate to the applicant, the original panel in *Britco* continued:

We are of the view that the same reasoning applies with equal force in the case at hand. When employees elect to join a trade union, it goes without saying that they have made a choice as to which organization they wish to have represent them. Unless the Board is otherwise satisfied that that choice is being reflected in the application before it, an application which is not made on behalf of the organization which the employees have joined should not be entertained. In the present case, we have no basis on which to conclude that the employees who joined Local 1928 have chosen to be represented by the Locals.

Obviously, in light of our conclusion in this regard, the locals may wish to seek to amend their application so that it is made on behalf of Local 1928 only. ... (p. 10, CLRBR)

88 In subsequent proceedings, the panel dealt with the request by the union to amend its application to have the applicant changed to the local in which the membership evidence was named. The panel granted that amendment finding that as it did not change the description of the bargaining unit, it did not alter the relevant date for determining membership support: *Britco Structures Ltd.*, BCLRB No. 332/83, (1984), 4 CLRBR (NS) 59, upheld on reconsideration, *Britco Structures Ltd.*, BCLRB No. 62/84, (1984), 5 CLRBR (NS) 352.

89 In *Thomas Lambert, supra*, the Board was faced with an argument based on *Britco* that the application for certification should be entertained only on behalf of one local because the members on site were members of that local. In dealing with that objection, the Board ruled as follows:

In any event, whether all or most of the membership evidence related to Local 452 alone, we reject the argument advanced by counsel for the Employer. In our view *Britco Structures Ltd., supra*, is distinguishable because that case, unlike the present one, concerned an application for certification for an industrial plant.

It is also significant that in the construction industry this Union has traditionally applied to the Board for certification for its 27 Locals and the Board has accepted that practice. I therefore decline, in this case, to depart from the Board's established approach. (p. 3)

90 In subsequent decisions after *Lambert*, the Council reaffirmed the practice of multi-local certifications. In *Seymour Building Systems Ltd.*, IRC No. C21/89, the Council rejected an objection to a multi-local application for a project certification under Section 45 of the *Industrial Relations Act*. In that case, the employer argued that the proper applicant was the local of the Carpenters which represented the geographic region in which the project was located. The Council found the employer had provided no persuasive reason for altering the standard practice of certifying the various locals as the bargaining agent:

...the Panel is satisfied the Council's existing practice of certifying "multi-local" units for the Carpenters in applications for certification under Section 39 and Section 45 must prevail. First, there is no evidence that an employer is prejudiced by the Council's practice; it appears to the Panel that an

employer can only benefit from the Carpenters' ability to supply the required labour on a province-wide basis. Second, there is no reason to distinguish a project certification from a certification granted under Section 39 because in both cases the Carpenters may be called upon to supply members from outside of the geographic region in which the project or the employer is located. Finally, the Panel is not persuaded that the reasoning in *Britco Structures Ltd., supra*, is applicable to the case at hand. In that decision, the Board addressed the Carpenters' application for certification of an industrial, shop unit where the need for a province-wide supply of labour was highly unlikely. Further, the Board was concerned that the employees in the shop unit had not clearly chosen the "multi-local" (as opposed to Local 1928) as their bargaining representative. In the construction industry, and in particular, within the Carpenters' craft, there is a long history and tradition of representation by a "multi-local" bargaining agent. Without evidence to the contrary, the Panel must assume the members signing cards in Local 1237 were aware a "multi-local" application for certification would be made on their behalf. (p. 9)

91 Contrary to the Employer's submission, the Board and its predecessors have permitted joint applications in the construction industry under Section 20, both before and after *Britco*, without proof of membership support in all locals. The Board has not interpreted Section 20 or its predecessor provision as requiring each of the applicants to have a majority in their particular craft unit: *Victoria Paving Company Limited*, Letter Decision BCLRB No. B120/82, p. 10. The presence or absence of members in any one of the applicants does not bar an application so long as the requisite membership majority exists: *Hub Excavating Ltd.*, IRC No. C74/89, p. 5. Indeed, the Council interpreted the *Britco* decision as expressly allowing an application to be brought under the joint application provision in the Act, even when membership evidence was offered in only one of the applicants: *General Pipe-Teck Ltd.*, IRC No. C60/91.

92 Against that background of the decided cases on this issue, we return to the particular issue raised by this case. As this application arises in the construction industry, the reasoning in *Lambert* and *Seymour Building Systems* appears, at first blush, to be applicable rather than the reasoning applied in *Britco* to an industrial shop setting. Should there be any different result arising from the fact that this application is for a "wall to wall" certification as opposed to an application for the Union's standard craft certification?

93 We find *Britco, supra*, to be clearly distinguishable as that authority arose in the industrial sector. In contrast, in the construction sector, the rationale for permitting the practice of multi-local certificates with province-wide scope is based on the recognition

of the mobile nature of the construction industry and the need for a province-wide pool of labour. We find that rationale is equally applicable to an all-employee unit of construction workers as it is to the standard craft unit traditionally sought by this Union. We see no reason to depart from the practice outlined in *Lambert, supra*, merely because this application is for a wall-to-wall unit. While the Employer objects to granting what it terms as "sweeping representational rights" to a union that is seeking to step outside its traditional craft jurisdiction, the Board has clearly recognized that craft unions are not precluded from representing construction workers by means of an all-employee bargaining unit: *Cicuto, supra*, at 37-40.

94 However, while the Union may seek to be certified for a multi-local unit with province-wide scope, such an application must be brought under Section 20 as it is by its nature a poly-party application. Under the Board's existing policy under Section 20, a poly-party application may be submitted despite the fact that there is not membership support in each of the named unions. We reject the Employer's interpretation of Section 20 of requiring membership support in each or more than one local, as it is contrary to the authorities reviewed above and the Board's existing practice.

95 Under Section 20 of the Code, two or more unions can combine together and seek a certification for an employer should they obtain majority support among the employees in the proposed unit:

20. Two or more trade unions claiming to have together as members in good standing a majority of employees in a unit appropriate for collective bargaining may join in an application under this Part, and the provisions of this Code relating to an application by one trade union, and all matters or things arising from it, apply to the application and those trade unions as if one trade union were applying.

96 The definition of a "trade union" under Section 1 of the Code includes a local of a provincial, national or international organization of employees. Given that definition, we reject the Union's argument that Section 20 is only intended to apply to trade unions with different parent organizations. As this Union has applied in the name of 21 locals, the application should properly have been brought under Section 20. The Union's submission that the certified bargaining agent in the past has been the Provincial Council of Carpenters is based on a misapprehension. In the past when the Board has certified the 21 locals of the Union, the actual named locals on a certificate are "the trade union" for the purposes of the Code: *Columbia Hydro Contractors et al.*, BCLRB No. B36/94, (1994), 22 CLRBR (2d) 161 (Leave denied BCLRB No. B167/94), p. 187. While the named locals as a group may choose to delegate the poly-party's authority to bargain to the Provincial Council of Carpenters, the certified entity is the 21 individual locals as a poly-party which is treated as one union for the purposes of the Code.

97 As the Union has in its last written submission withdrawn its request for an amendment to bring this application under Section 20 of the Code, and the Union has not sought an amendment so that the application is made on behalf of Local 1995 only, the Union's application for a multi-local certification remains under Section 18. It should properly have been brought under Section 20 if the Union persists in its desire for a multi-local certification. In these circumstances, we are not prepared to offer relief under Section 156 of the Code from this technical irregularity as the Union has expressly declined to seek that amendment and has not invited us to grant such an amendment on our own motion. While the Board does not take an overly technical approach in determining whether there has been an application to amend, particularly where a party is unrepresented by legal counsel, where a party has specifically withdrawn a request for that very amendment, we do not consider it appropriate on our own motion to grant such an amendment: *Dominion Directory Company*, BCLRB No. B327/95, at 6-7.

98 Apart from that withdrawal of the request for the amendment, there are additional reasons for not granting an amendment as other prerequisites for a polyparty certification may not have been met. An application under Section 20 would also require the filing of a constitution governing the relationship among the members of the poly-party. As the Board ruled in *C.H.C.*, *supra*, all applications for certification pursuant to Section 20 in the future would require a constitution to be submitted with the application for certification (at 188-189, CLRBR). As this requirement represents a relatively recent change in policy, the Board invites the Union and any other union affected by this requirement to consult with the Board, either formally or informally, for guidance as to the contents of that constitution.

99 In summary, we find the Employer's objection to the lack of membership support in other locals and to the extension of the *Lambert* rule to all employee units is ill founded. However, while a multi-local application with province-wide scope is open to this Union, it must be brought under Section 20 of the Code with an accompanying Constitution. As the Union has withdrawn its request for an amendment under Section 20, the application for certification under Section 18 of a multi-local unit is dismissed.

D. Unfair Labour Practice

100 The remaining issue is the Union's assertion that the Employer has violated Section 6(1) of the Code through the inquiries by Kidd about the union affiliation of Openshaw and Desputeaux.

101 Section 6(1) is designed to protect and preserve the basic freedom employees have guaranteed by Section 4 of the Code to join a union. Unlike other unfair labour practice provisions, coercion or intimidation, whether intended or not, is not a necessary element to a finding of a breach of Section 6(1): *The Langley Advance Publishing*

Company, BCLRB No. 139/74. Interference with an employee's freedom to join the Union may be sufficient to establish a violation.

102 As the Board in *Forano, supra*, described the dynamics of the employer/employee relationship, given the authority exercised by an employer and its degree of influence, an employer may easily convey an implicit message to the employees that their employment is in jeopardy:

...we must always be conscious of the fact of employee dependence on the employer, especially for job security, and the opportunity this gives the employer for undue influence on that choice. Comments and predictions which might seem innocuous in a political campaign take on a very different hue when voiced by management. ... (p. 18)

103 Previous cases before the Board have recognized that attempts on the part of employers to learn the union affiliation of its employees violate Section 6(1). In *Langley Advance, supra*, an employer was found to have violated the predecessor to Section 6(1) by confronting employees with the question of whether or not they were members of the Union. Similarly, in *The Delta Optimist*, BCLRB No. 26/80, [1980] 2 Can LRBR 227, an employer's individual questioning of employees to determine whether or not they had joined the union was found to contravene the Code.

104 Quite clearly, this Employer should not have asked the employees for this sensitive information on whether or not they had signed cards. The pressures inherent in such a situation as described in *Forano* are obvious. We find that, when Kidd made such inquiries on behalf of the Employer, he interfered with the employees' efforts to secure collective representation. Even if his only purpose was to find out what was going on, he was seeking to determine whether employees had joined the Union. An employer is not permitted to conduct such an examination: *Delta Optimist, supra*, p. 234. That inquiry about union affiliation was not a statement of fact or opinion reasonably held with respect to the Employer's business within the protection of Section 8. That activity clearly crossed the line from free speech to improper interference: *Delta Optimist, supra*, p. 238.

105 In exercising our discretion in deciding what, if any, remedy may flow from this finding of a violation of Section 6(1), we have considered that at the time of these events this Employer was unsophisticated in the requirements of the Code and had not had the benefit of legal advice. As we believe the Employer will not persist in these activities now that its obligations are clarified, we declare only that the Employer by its action has violated Section 6(1), but we see no need to issue a formal cease and desist order.

106 In light of our finding of a violation of Section 6(1), it is unnecessary for us to consider the complaint under Section 9 and to decide whether or not the Employer's actions could also be characterized as coercive or threatening.

V. CONCLUSION

107 In summary, we find the unit applied for is appropriate as it does not cut across classification lines so as to affect the core duties of individuals within the bargaining unit. We have also found that the membership evidence is not affected as the allegations of misrepresentations were not borne out on the evidence. As for the Employer's objection to the multi-local nature of the application for certification, we reject the Employer's jurisdictional argument that the Union is precluded from bringing a multi-local application. We consider the fact that the application is for a "wall-to-wall" certification outside of the Union's traditional craft boundaries is not a ground for dismissal of the application. While an application may be brought under Section 20 where there is an absence of membership support in more than one local union, such an application must be brought under Section 20 of the Code as a poly-party application. As the Union has withdrawn its request for an amendment to bring this application under Section 20, and as we are not prepared to make such an amendment on our own motion, we dismiss the application for certification under Section 18.

108 In relation to the Union's unfair labour practice complaint, we find the Employer interfered with the selection of a trade union by its inquiries of the employees about their membership in the Union; however, in light of the circumstances, we do not see it necessary to issue any remedial order as we are satisfied that this behaviour engaged in while the Employer was unrepresented was the result of a misconception of an Employer's obligations under the Code.

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