

LETTER DECISION
BCLRB No. B209/95

June 2, 1995

To Interested Parties:

Re: ~~NRS Block Bros. Realty Ltd. (the "Employer") and Teamsters~~
Local Union No. 31 (the "Union")
(Application for Certification - Case No. 22466)

1 The Union applies for certification claiming more than 55 per cent of the employees in the proposed unit as members in good standing.

2 Upon reviewing the confidential portion of the IRO report, I raised a concern about the membership evidence filed in support of the application. Two copies of a membership card were provided to me. One copy of the card was dated and one was not. Lyle Kent, the Union organizer, described the Union's procedures concerning the completion of membership cards. As noted in BCLRB No. B184/95, it was evident that some cards, although dated on the same day as signed, may not have been "signed and dated at the time of signature" as required by Regulation 3.

3 In BCLRB No. B184/95 I ordered a further IRO report. I asked the IRO to contact the organizer(s) involved in the drive to ascertain whether employees' membership cards were signed and dated at the time of signature. I asked her to contact some employees to confirm the information received from the organizer(s).

4 The Employer sought an order requiring an investigation of all cards signed to ensure each card complied with Regulation 3. I declined to make such an order.

5 The supplemental IRO report provides as follows:

Further to the request for an investigation to ascertain whether employees' membership cards were signed and dated at the time of signature, I report as follows:

I have examined the original cards and spoken to several employees who signed cards. I am satisfied that all but 4 of the cards were dated by the employee at the time of signature. One of the cards was the one discussed in the hearing. In the case of the other 3 cards the cards were dated by somebody other than the employee. I have met with each of these employees. 2 of the employees recall with certainty that they completed their card in the presence of a third party who witnessed their signature and filled in the date. The other employee completed a card in the presence of a third party but they do not recall whether the third party filled in the date or not. This employee does recall that the third party did write on the card after it was given to them. All 3 members confirm that they signed their card on May 3, 1995.

The Union Organizers told me that people filled out their own cards and when the employee signed a card it was in the presence of somebody else who witnessed their signature. In the case of the above 3 cards a Union Organizer confirms that they witnessed the employees' signatures and at the time filled out the date.

Regardless of the arguments regarding the possibility of 2 membership cards being excluded the Union has the support for automatic certification.

6 The Employer again asked that all employees who signed Union membership cards be interviewed. The Employer objected to the two cards dated by the witness when the employee signed the card.

7 I again declined to order an investigation of every card signed.

8 In it's final submission on the issue of the Union's membership support the Employer argues that the Union's organizing campaign was significantly tainted and it's application should be dismissed. The Employer says the Union attempted to deceive the Board when it filed cards which had not been dated at the time of signature. In the alternative, the Employer says a representation vote should be held.

9 The Board's position on compliance with the Regulations is set out clearly in *Dencan Restaurants Inc.*, BCLRB No. B255/93, (leave for reconsideration of decision dated March 31, 1993). Non-compliance with the Regulations is fatal to a membership card. A high degree of integrity and precision in membership cards is insisted upon. If there is an irregularity with a

card, the employee will not be included in the calculation of membership support. If there are a number of irregularities or doubt is cast upon the reliability of the membership cards the Board may dismiss the application (depending upon the nature of the irregularities and the impact on the sufficiency of support) or order a vote under Section 24(1). The Board in *Dencan, supra*, discussed the circumstances under which an application would be dismissed, or a vote ordered:

The Board must, of course, be satisfied that the allegations cast a reasonable doubt on the integrity or validity of the membership evidence. For example, in a large bargaining unit, if a few cards were relied upon which were undated, but those cards did not jeopardize the 55% membership evidence needed to grant an automatic certification, the Board might choose not to investigate further. So long as the Board is convinced that the error arose by simple mistake and was not deliberate or fraudulent, no further action need be taken other than the disqualification of those particular cards. ...

If the panel is convinced that the nature of the improprieties is such that the validity of membership evidence is cast into doubt a vote may be ordered to determine the true wishes of the parties. A vote will also be necessary if the panel finds that enough cards have been tainted that the union can no longer claim membership of 55% or more but can still show membership evidence of 45%. If the panel finds that there have been improprieties of a nature that the entire certification drive has been tainted, or that the union can no longer demonstrate at least 45% membership, then the application for certification may be dismissed. Finally, if after investigation and/or a hearing the panel is satisfied that the improprieties are not made out or are so insignificant as to not cast doubt on the true wishes of the employees, the panel is still free to grant automatic certification. ...

Thus, errors in membership cards that are the result of innocent mistakes will simply disqualify the particular card. However, "cards" that are the result of deliberate fraud by a business agent, even if one card, may result in a vote, or even in some circumstances, dismissal of the entire application. (pp. 8-9)

The Employer argues that the Union sought to defraud the Board by filing a card which had not been dated at the time of signature. Kent, the Union organizer, was in error as to the requirements of Regulation 3. He operated under the mistaken belief that if the card was dated

on the same day it was signed the requirements of Regulation 3 were met. Neither he nor the Union sought to commit a fraud on the Board. When Kent realized his error he was quick to indicate the Union would not rely upon the card which was dated hours after signature.

11 I note the Board's recent decision in *Eagle Park Health Care Facility*, BCLRB No. B193/95:

In my view, the Association was obliged to disclose to the Board the facts surrounding the defects in its membership evidence regardless of whether a final determination had been made about the consequences that could flow from such defects. The certification process established by the Board is designed to ensure applications are processed expeditiously and in a manner that preserves the confidentiality of membership evidence. It is by necessity a primarily administrative process where great reliance is placed upon the applicant to ensure the integrity of membership evidence. In particular, there is an onus placed upon an applicant to act with a high degree of integrity with respect to the signing of membership cards because both the identify of members and the solicitation of membership cards is a confidential matter beyond the purview of other interested parties. The Board does not disclose membership evidence to either the employer or a competing applicant. Often the Board must rely upon the cards as the primary evidence of membership support and only in limited circumstances will it go behind the cards to investigate an alleged impropriety: *Dencan Restaurants Inc., supra*. To ensure the certification process remains faithful to the objects and purpose of the Code, the Board relies upon applicants to make full disclosure of any defects in this membership evidence. (para. 44)

Having heard Kent's explanation as to what occurred I am satisfied that Kent did not knowingly fail to disclose any defect in the cards submitted in support of the Union's application.

12 The Employer argues the entire membership evidence is tainted and it all must be rejected. It is clear that the entire membership evidence is not tainted. The IRO has reviewed the cards, spoken to the organizer(s), spoken to a representative group of employees, and concluded the cards were signed and dated by the employees at the time of signature. A reasonable doubt has not been cast on the integrity or validity of the membership evidence. The filing of the card dated after the signatrure was as a result of a mistake. No further action other than the disqualification of this card need be taken.

13 The Employer says two membership cards dated by the witness(es) when the employee signed the card must not be counted in determining membership. The Regulations do not specify that the date must be completed by the employee who signs the card - it must simply be dated "at the time of signature". I find that these two cards comply with the requirements of Regulation 3.

14 What of the employee who signed a card but cannot now recall whether the date was placed on the card by the witness to the signature at the time of signature? I need not determine whether this card complied with the Regulation. Even with the exclusion of these two membership cards the Union has sufficient membership support to be granted certification without a vote.

15 There being no other objections to the certification, I find that the Union has sufficient membership support to be granted certification, and I so order.

LABOUR RELATIONS BOARD

KATE YOUNG
VICE-CHAIR

Interested Parties Listed Overleaf:

Interested Parties:

Teamsters Local Union No. 31
31 Grosvenor Square
Delta, BC V3M 5S1
ATTENTION: Lyle Kent (Representative for the Union)

NRS Block Bros. Realty Ltd.
19th Floor - 1188 W. Georgia Street
Vancouver, BC

Harris & Company
Barristers & Solicitors
22nd Floor, 1111 W. Georgia Street
Vancouver, BC V6E 4M3
ATTENTION; Adam S. Albright (Counsel for the Employer)

Sarah James
Industrial Relations Officer
Vancouver, BC