

BRITISH COLUMBIA LABOUR RELATIONS BOARD

CANADIAN HOLIDAYS LTD.

(the "Employer")

-and-

NATIONAL AUTOMOBILE, AEROSPACE AND AGRICULTURAL
IMPLEMENT WORKERS UNION OF CANADA (CAW-CANADA) LOCAL 1990

("CAW" or the "Union")

PANEL: Emily Burke, Vice-Chair

COUNSEL: Patricia Gallivan, for the Employer
John Bowman, for the Union

CASE NO.: 19248

DATE OF HEARING: June 16, 1994

DATE OF DECISION: June 16, 1994

DATE OF REASONS: June 30, 1994

DECISION OF THE BOARD

I. NATURE OF APPLICATION

The Union filed an application to vary a certification granted on March 31, 1994 to include in its existing bargaining unit with the Employer, employees in the resource, payload, accounting, automation, sales, group sales, administration, marketing and advertising departments.

The Employer raised a preliminary objection to the application. The Employer maintains the Union is precluded from filing this application by virtue of the agreement reached between the parties on March 31, 1994 regarding the Union's earlier application for certification.

I upheld the preliminary objection. This decision records the reasons for that decision.

II. FACTS

On March 24, 1994, the Union applied to be certified for a unit of employees of the Employer described as: employees in the following departments: reservations, groups, customer service, resource, ticketing, payload and automation. At the time of the hearing, the Employer raised a number of objections to the appropriateness of the unit and took the position that group sales, resource control, payload and automation should be excluded from the unit. In addition, it also took the position that all seasonal employees should be excluded.

The application was scheduled for a hearing on March 31, 1994. The parties spent that day at the Board, with the assistance of an Industrial Relations officer of the Board, attempting to resolve issues concerning the application. An agreement was ultimately reached. The agreement reflected that:

the Employer agreed

- 1) Both part time and full time seasonal employees would be

included in the bargaining unit,

- 2) the position of Airport Representative, would be included in the bargaining unit.

In return for those concessions, the Union agreed that

- 3) group sales, resource control, payload and automation would be excluded from the bargaining unit.

On the basis of that agreement, an amended bargaining unit description was drafted which deleted reference to these latter four groups, added a Vancouver Airport Representative and included all seasonal employees in the list of employees. An issue concerning casuals was not resolved and the parties agreed to defer this to collective bargaining. The certification was granted to the Union with the bargaining unit composed of:

employees at 1200 West 73rd Avenue, Vancouver, B.C. in the Customer Service Department including reservations, customer service representatives, ticketing and airport representatives at Vancouver International Airport excluding supervisors and persons above the rank of supervisor.

III. ARGUMENT

The Employer argues the present bargaining unit description was agreed to based on concessions sought and obtained by both parties in the informal process of the Board. The intent of the agreed appropriate bargaining unit was to get collective bargaining underway for a first collective agreement. It was intended to govern the initial collective bargaining regime.

In reply the Union argues this variance application is a different application. The Union now seeks an all-employee bargaining unit. The Union says the agreement was not as alleged by the Employer. There was no specific agreement not to seek variance to expand the unit. The purpose of the agreement was nothing more than a resolution of a particular certification

application. The Union says there was no deal as alleged by the Employer.

IV. ANALYSIS

The Union made an agreement on March 31, 1994, as part of the informal processes of the Board, to exclude certain individuals from the presently certified bargaining unit. It now seeks to include those individuals, albeit as part of a larger group. While I agree that the agreement is the resolution to a particular application, the effect of that resolution cannot be ignored. A certification was granted which then required the parties to bargain. An agreement reached to resolve issues concerning the Union's application for certification is an agreement which by its nature is to establish the parameters for the bargaining of an initial collective agreement. To a great extent the scope of the bargaining unit initially sought is in the control of the Union when it makes its application for certification. The effect of decisions reached by the parties in the process of settling a certification application should and do concern the bargaining unit to be established for bargaining of that first collective agreement.

As a result, I conclude that the Union, having made the agreement to exclude certain individuals, should be bound by that agreement. That agreement I find by reason of the above analysis, to have been for the establishment of the unit for the bargaining of a first collective agreement. I note the agreement is not alleged to offend the Board's policies in defining an appropriate bargaining unit nor are any other concerns raised as set out in *Automatic Electric*, BCLRB No. 26/76.

More importantly, however, I agree as outlined in *Speers Construction Ltd.*, September 20, 1981, that the informal process is an "essential and valuable tool" of the Board. This process would be adversely affected if applications can be made contrary to agreements reached. I find this application for variance to be contrary to the agreement reached in this case.

I add this conclusion is not without precedent. This Board has recently applied a similar analysis in both *B.C. Ferry Corporation*, BCLRB No. B166/93 and a more recent case *Ebco-Hamilton Partners*, BCLRB No. B157/94. In *Ebco Hamilton Partners*, *supra*, the Board when considering an application for variance, had "no hesitation in considering that the Union, having

made an agreement in collective bargaining to exclude the section managers, should be bound by that agreement (at p. 5). The Board in *B.C. Ferry Corporation, supra*, pointed out "the tribunal must be concerned with the integrity of its processes" (at p. 12).

I note finally that although the Employer's objection succeeds, this does not preclude the matter from being raised in bargaining. Further the agreement lasts only through the term of the first collective agreement, subject of course to any agreement on this point that the parties are able to achieve in collective bargaining.

V. CONCLUSION

The Employer's objection succeeds. The application for variance is dismissed.

LABOUR RELATIONS BOARD

EMILY BURKE
VICE-CHAIR