

BRITISH COLUMBIA LABOUR RELATIONS BOARD

M3 STEEL (KAMLOOPS) LTD.

(the "Employer")

-and-

CANADIAN IRON, STEEL AND INDUSTRIAL WORKERS' UNION
LOCAL #1

(the "Applicant")

-and-

UNITED STEELWORKERS OF AMERICA, LOCAL 1037

(the "Steelworkers")

PANEL: Margaret Arthur, Vice-Chair and Registrar

COUNSEL: Joe Coutts, for the Employer

Timothy G. Charron, for the Applicant
David L. Blair, for the Steelworkers

CASE NO.: 16688

DATE OF DECISION: December 2, 1993

DECISION OF THE BOARD

I. NATURE OF APPLICATION

The Applicant seeks a determination under Labour Relations Regulation, Section 3 that an application for membership card dated "October 19" is sufficient to meet the criteria for membership outlined in the Regulation. The Applicant also challenges the counting of the ballot of Leonard Fraser on the basis that he had tendered his resignation from employment and no longer has a community of interest with other employees. For the reasons that follow I find that the partially dated membership card does not meet the Regulation under Section 3. Accordingly, there is no need for me to make a determination on the challenged ballot of Leonard Fraser.

II. BACKGROUND

On October 5, 1993 the Applicant applied under Section 18 of the Code for a unit of employees in the shop and office of the Employer. The shop employees are represented by the United Steelworkers of America, Local 1037 (the "Steelworkers"). By Letter Decision BCLRB No. B334/93 Vice-Chair Longpre dismissed the application on the basis that the proposed unit was not substantially different from the existing unit and suggested that such an application must be brought under Section 19 of the Code.

On October 8, 1993 the Steelworkers filed a competing application under Section 18 for certification of shop and office employees which was subsequently withdrawn on October 14, 1993.

On October 20, 1993 the Applicant filed an application under Section 19 for employees except supervisory and office staff. The investigating officer's report indicates that the Applicant does not meet the threshold majority support required under Section 19(1) of the Code because one card was not "fully dated". It states "October 19" rather than "October 19, 1993". The parties then made submissions on whether this partially dated card meets the criteria for membership under Section 3.

III. POSITIONS OF THE PARTIES

The Applicant submits that the membership card in question was either fully dated or sufficiently dated to identify the ninety (90) day time limit in support of the application for certification.

The Applicant states that the Employer commenced business in 1992; that the Applicant's application for membership card was only amended after the Regulation was proclaimed (January 18, 1993); therefore the card could only have been signed in 1993. Further, the accompanying receipt confirming payment of \$1.00 is dated October 19, 1993 and that ought to form part of the membership evidence. The Applicant states that even if the year is to be stated the card is not voided because of Section 28(1) of the *Interpretation Act* which states: "Where a form is prescribed by or under an enactment, deviations from it not affecting the substance or calculated to mislead, do not invalidate the form used." The Applicant also relies on Section 156 of the Code.

The Steelworkers submit that without a complete date, the application for membership card was not dated at the time of signature and this omission is then fatal to the application. The requirement of a signature and date have been rigorously applied long before this requirement was codified in the Regulation. However, the fact that the requirement of a signature and date is now in the statute strengthens the need for compliance.

The Steelworkers say that the Board has recently reviewed its policies, now Section 3 of the Regulation, in *Elkview Coal Corporation*, BCLRB No. B288/93 (leave granted by BCLRB No. B376/93), and *Dencan Restaurants Inc.*, BCLRB No. B255/93 (leave for reconsideration of decision dated March 31, 1993), which specify strict compliance.

The Employer made no submission on Section 3.

IV. ANALYSIS AND DECISION

Section 22(3) of the Code states that membership in good standing in a trade union *must* be determined on the basis of the requirements prescribed in the Labour Relations Regulation.

Section 3 of the Regulation reads as follows:

3. For the purpose of establishing membership in good standing in a trade union where that trade union is making an application for certification, the following minimum criteria apply:
 - (a) a membership card must be signed and dated at the time of signature;
 - (b) a membership card signed on or after January 18, 1993 must contain the following statement:

In applying for a membership I understand that the union intends to apply to be certified as my exclusive bargaining agent and to represent me in collective bargaining;
 - (c) within 90 days of the application for certification,
 - (i) the membership card must have been signed, or
 - (ii) active membership must have been maintained by dues payments.

Date is defined in Black's Law Dictionary as "the specification or mention, in a written instrument, of the time (day, month and year) when it was made (executed). Also the time so specified. In its common and accepted statutory meaning refers simply to day, month and year".

From time to time over the years, the Board has enunciated its policy and standards regarding the membership evidence that a union must put before the Board to meet the threshold requirements of the statute, whether or not that threshold requirement precipitates a vote: *Bennett Pollution Controls Ltd.*, BCLRB No. 18/77, [1977] 1 Can LRBR 462; *Phillips Cables Ltd.*, BCLRB No. 52/77; *White Spot Limited*, BCLRB No. 82/85; *Cominco Limited*, BCLRB No. 44/82, [1982] 3 Can LRBR 301.

With the proclamation of the Code on January 18, 1993, the criteria for membership is clearly stated in the Labour Relations Regulation. The Board in *Dencan Restaurants Inc.*, *supra*, and *Elkview Coal Corporation*, *supra*, has affirmed that this Regulation is a substantive provision and "non-compliance will be fatal to membership in good standing": *Dencan*, at page 4. As the membership cards are not disclosed to any other party, they are not subject to cross-examination. The Board, therefore, "must insist on a high degree of integrity and precision in the cards presented to it as evidence of membership in a union": *Dencan*, at page 8.

The Applicant says that the date is only meant to show that the card was signed 90 days

prior to the application for certification. I disagree. The Regulation states the card must be signed and dated at the time of signature. The date and signature must be given at the same time. That is one criterion. The date also serves to determine the length of time for which it is valid. That is a second criterion. The incomplete date of "October 19" meets neither criteria in this case. I accept Black's Law Dictionary's definition of date and find that the date required in Section 3 is one of substance and not form under Section 28(2) of the *Interpretation Act* as submitted by the Applicant. Section 156 gives the Board the discretion to relieve against defects or irregularities. For matters where there is a "defect in form, a technical irregularity or an error of procedure ...". However, Section 3 is a substantive provision - it sets out minimum statutory requirements to achieve membership support. These cannot be "relieved" against.

The requirements are expressly written in the statute and unions now clearly know what is required. The Board has articulated in *Elkview Coal* and *Dencan Restaurants* the high standard it will expect of the membership evidence proffered by a union. For the Board to deviate from strict compliance with Section 3, would only put an unfair burden on investigating officers to determine what is a material defect and would also foist more adjudication on the Board when no clear rules on what constitutes a material error are enunciated.

In my view, the standard should be no different for a raid situation than in an initial application for certification. The consequences of either type of application is significant and the Board must be relied on to enforce the Regulation consistently.

As long as the membership evidence complies with the Section, the Board has indicated that it will not go behind the membership evidence lightly. Permitting more flexible interpretations of the Regulation is contrary to the express intention of the statute and the need of the labour relations community to understand the rules governing certification. In *White Spot Limited, supra*, when considering minimum requirements under the Code, the Board said:

... evidentiary hearings to determine majority support are not feasible due to both the length of time involved in such process and the threat to confidentiality.... (p. 9)

The Applicant is aware of the Regulation but did not meet those requirements. It had an

opportunity to withdraw its application and chose not to do so. It has not met the required threshold membership support required under Section 19. Its application therefore is dismissed. The ballots cast in the representation vote are ordered not to be counted.

LABOUR RELATIONS BOARD

MARGARET ARTHUR
VICE-CHAIR AND REGISTRAR