

**BRITISH COLUMBIA LABOUR RELATIONS BOARD**

L - 178 HOLDINGS LTD. (RAMADA LTD. HOTEL)

(the "Employer" or "Applicant")

-and-

A CERTAIN EMPLOYEE

("Certain Employee" or "Applicant")

-and-

NATIONAL AUTOMOBILE, AEROSPACE, TRANSPORTATION AND GENERAL  
WORKERS UNION OF CANADA, (CAW - CANADA), LOCAL 3000

(the "Union")

PANEL: Keith Oleksiuk, Chair  
Frances R. Watters, Associate Chair (Adjudication)  
Mark J. Brown, Vice-Chair

COUNSEL: Susan P. Arnold/Kate Bayne, for the Employer  
Randy Kaardal, for A Certain Employee  
Roger Crowther/John Bowman, for the Union

CASE NOS.: 37570 and 37571

DATE OF DECISION: January 14, 1999

## DECISION OF THE BOARD

### I. NATURE OF THE APPLICATION

1           A Certain Employee and the Employer apply under Section 141 of the *Labour Relations Code* for leave and reconsideration of the Board's August 7, 1998 decision to grant automatic certification to the Union. Both Applicants submit that the original panel's decision to disallow two membership revocations is contrary to principles expressed or implied in the Code.

### II. BACKGROUND

2           The Union applied for certification of a unit of employees described as "employees of the Ramada Ltd. Hotel, 19225 Highway 10, Surrey, B.C., except sales, office and management". That application was received by the Board via facsimile at 3:45 p.m. on July 29, 1998.

3           Also on July 29, 1998 Certain Employee and a second employee faxed revocations of their Union membership to the Union and the Board. Those revocations were delivered to the Union at 3:51 p.m. and to the Board at 4:02 p.m. In keeping with the Board's policy of treating all materials filed after 4:00 p.m. as received on the next business day, the revocations were date stamped July 30, 1998 by Board staff.

4           Via letter dated August 6, 1998 Certain Employee explained to the Board that his revocation was delivered late due to difficulty in locating the Board's facsimile number. At the certification hearing on August 7, 1998 the original panel disallowed Certain Employee's application to have his late revocation relied upon. Both Certain Employee and a second employee were deemed to be members in good standing with the Union at the time the application for certification was filed. Given the level of support for the Union, an order for automatic certification issued.

### III. POSITIONS OF THE PARTIES

5           Certain Employee argues that the decision of the original panel to disallow the revocations filed after 4:00 p.m. on July 29, 1998 is inconsistent with principles expressed or implied in the Code. Certain Employee relies on Section 23(1) of the Code which requires the Board to determine that it "is satisfied that on the **date** it receives an application for certification that not less than 55% of the employees in the unit are members in good standing of the trade union." Based on this provision, the Board must consider all events that occur on the date the application for certification is filed. The revocations are one such event. Certain Employee emphasizes the relevance of the word "date" in Section 23(1) as meaning "a day of the month" or "a calendar day". *Lornex Mining Corporation Ltd.*, BCLRB No. 37/81 is advanced for the

proposition that "date" under Section 23(1) means the 24 hour period of a particular day.

6 In distinguishing *Royal Oak Mines Inc.*, BCLRB No. B269/98 (upheld on reconsideration in BCLRB No. B368/98), Certain Employee argues that "delivery" under Regulation 4 is distinct from "filing" under Rule 5(5) of the Labour Relations Board Rules. In other words, the requirement that revocations be delivered to the Board under Regulation 4 is much broader than the Rule 5(5) obligation to file certain documents by the end of the Board's business day. Even if Rule 5(5) applies, however, Certain Employee submits that the close of the Board's business day is 4:30 p.m. not 4:00 p.m. Finally, Certain Employee argues that the April 28, 1998 BCLRB memo setting a 4:00 p.m. deadline for the filing of documents is inconsistent with Rule 5(5) and that inconsistency creates a hardship for Certain Employee attempting to exercise his rights under the Code. By way of remedy, Certain Employee asks the Board to rely on the revocations in determining whether the Union has the threshold support for automatic certification.

7 The Employer maintains that the disputed revocations were delivered in a timely way and should have been relied upon by the Board in assessing the Union's membership support. The Employer adopts the arguments raised by Certain Employee and further asserts that Certain Employee and a second employee complied with Regulation 4 which simply requires that a revocation be delivered on the "date" of the application for certification. Neither the Code nor the Regulations stipulates a time deadline for revocations, consequently "date" means a 24-hour period. Alternately, "date" means the close of the Board's business day. Moreover, a 4:00 p.m. deadline, according to the Employer, is contrary to Rule 5(5) and is unfair and arbitrary. In relying on *Lornex Mining, supra*, the Employer submits that the proper test for the validity of revocations is whether they are "sufficiently coincident" with the application for certification. That test, it argues, is more consistent with the clear meaning of the Code and Regulations.

8 The Union maintains that the revocations were properly disqualified as untimely. The 4:00 p.m. deadline is applied not only to revocations, but to all other applications including applications for certification. The original panel applied the 4:00 p.m. deadline to the revocations in a manner consistent with the Board's uniform practice in this regard. A special rule should not apply to revocations. The Union further maintains that a Certain Employee was specifically notified by Board staff on July 28, 1998 that to be valid, his revocation must be submitted before 4:00 p.m. Even with that knowledge the revocation was filed late. Finally, the Union relies on *Royal Oak Mines, supra*, where revocations submitted after 6:00 p.m. were deemed invalid as falling after the Board's business day.

#### IV. ANALYSIS AND DECISION

9 The Code sets out the Board's obligation to assess the underlying membership support of an application for certification "on the **date** it receives" that application. Section 23(1) of the Code states:

If the board is satisfied that on the date it receives an application for certification not less than 55% of the employees in the unit are members in good standing of the trade union and that the unit is appropriate for collective bargaining, the board must certify the trade union as bargaining agent for the employees in the unit. (Section 23(1), *BC Labour Relations Code*)

10 Similarly, Section 4 of Regulation stipulates that for a revocation to be valid it must be delivered to the trade union and the Board "on or before the **date** of application for certification." The Section states:

A membership card may be revoked by delivering a written statement signed by the member to the trade union and the Labour Relations Board on or before the date of application for certification. (B.C. Regulation 7/93)

11 The **date** of the application for certification is the operative time frame for the Board's assessment of both membership support and revocation of membership support.

12 In establishing the date of application, the Board has set 4:00 p.m. as the business day cut-off time for **filing** applications. Applications received after 4:00 p.m. are date stamped as received on the next business day thus making that day the date the application is filed with the Board. Membership cards in support of an application for certification are considered in relation to the date the application is filed. Membership cards are valid if signed before midnight of the filing date. For example, an application received at 5:00 p.m. on January 2, 1999 will be date-stamped January 3, 1999 and membership evidence will be accepted until midnight of January 3, 1999.

13 Membership cards and revocations are both documents to be weighed in the calculation of membership support. The fact that revocations, unlike membership cards, must comply with the delivery requirements set out in Section 4 of the Regulation does not affect the basic nature of revocations as membership documents. Unless the statutory or regulatory language suggests otherwise, the policy of consistent treatment of membership documents favours accepting that revocations are also valid if signed and delivered before midnight of the filing date.

14 The clear wording of both Section 23(1) of the *Code* and Section 4 of the Regulation support treating revocations like membership cards for the purpose of

timeliness. Implicit in this conclusion is a rejection of the argument that the intent of the Legislature was to allow a different meaning for the **date** period for assessing membership support under Section 23(1) than the **date** period for revoking membership in Section 4 of the Regulation. These provisions must be read together, and in a way that harmonizes their meaning. Accordingly, we find that the **date** reference in both provisions means the 24-hour period of the calendar date on which the application for certification is filed. Put another way, the Board's obligation to weigh the membership evidence under Section 23(1) includes the task of counting and discounting membership cards up to midnight on the date the application is filed. In summary, the 4:00 p.m. deadline is the cut-off time for filing the application itself. However, the Code and the Regulation effectively set midnight of the date the application is filed as the cut-off time for the back-up documents in support of that application including the cut-off time for delivery of revocations: *Lornex Mines, supra*.

15 The Union correctly points out that *Royal Oak Mines, supra*, disallowed revocations received after 4:00 p.m. on the date the application for certification was filed. For the reasons set out above, we do not accept the approach taken in *Royal Oak* and note the revocation cut-off time was not appealed by any party on reconsideration.

16 We further find that the facts advanced by the Union as to Certain Employee's awareness of the 4:00 p.m. deadline is not determinative. Nor is Certain Employee's detailed explanation as to why he filed his revocation late material. What governs in this case is the combined effect of Section 23(1) of the Code and the requirements of Section 4 of the Regulation.

17 Finally, given our disposition above it is not necessary to make a finding on Certain Employee's argument that "filing" under Rule 5(5) of the Board's Rules is distinct from "delivery" under Section 4 of the Regulation.

## V. CONCLUSION

18 We accept Certain Employee's and the Employer's argument that the two revocations delivered at 4:02 p.m. on July 29, 1998, but date-stamped July 30, 1998, were delivered in a timely manner. They are therefore counted as valid for the purpose of calculating the Union's threshold support. Given that disposition, the Union does not have the requisite support for automatic certification. However, the Union has met the threshold of 45% required for a representation vote under Section 24(2) of the Code.

19 Accordingly, the original panel's order of automatic certification on August 7, 1998 is set aside. The Union's automatic certification is cancelled. A representation vote is ordered, to be held within the next 10 days.

KEITH OLEKSIUK  
CHAIR

FRANCES R. WATTERS  
ASSOCIATE CHAIR (ADJUDICATION)

MARK J. BROWN  
VICE-CHAIR