

BRITISH COLUMBIA LABOUR RELATIONS BOARD

BRINCO COAL MINING CORPORATION

(the "Employer")

-and-

UNITED STEELWORKERS OF AMERICA, LOCAL NO. 1037

(the "Union")

PANEL: Margaret Arthur, Vice-Chair and Registrar

COUNSEL: Thomas D. Schiller for the Employer

David K. Pidgeon for the Union

CASE NO.: 13756

DATE OF HEARING: January 25, 1993

DATE OF DECISION: January 25, 1993

DATE OF REASONS: January 28, 1993

DECISION OF THE BOARD

I. NATURE OF APPLICATION

The Union has applied for certification under Section 18(1) of the *Labour Relations Code*. It has requested automatic certification based on membership cards signed prior to January 18, 1993. The Employer argues for a representation vote. The issue is whether the Board should exercise its discretion to order a representation vote under Section 162 of the Code.

II. FACTS

1. On January 18, 1993, the Union applied for certification under Section 18(1) of the *Labour Relations Code* for a bargaining unit consisting of "all employees except foremen, firebosses and persons above the rank of foremen and firebosses".
2. On January 25, 1993, by agreement of the parties, the Union amended its bargaining unit description to: "all employees except foremen, firebosses and persons above the rank of foremen and firebosses, office, professional and technical employees".
3. The investigation by the Industrial Relations Officer assigned to this matter established that all membership cards were signed prior to January 18, 1993; in addition, the cards did not contain the required language set out in Section 3(b) of the Labour Relations Regulation.
4. Based on the membership evidence confirmed by the Officer, the Union has signed up 55 percent or more of employees in the proposed bargaining unit (see Section 23(1) of the Code).

III. EVIDENCE

The Union called Roger Falconer, National Director of Organizing with the Union, to give evidence on the organizing campaign. Falconer stated that he personally ran the campaign and made it clear to every member, except one, before they signed an application for membership card that the Union would be applying for automatic certification. He noted that one member signed a card when he was not present; thus, he did not know what that employee was told. Falconer made it clear to employees that whether they signed a card or not, the Union would not apply for certification until the law had "changed" and automatic certification became an option.

The Employer called no evidence and Falconer's evidence as set out above was not challenged on cross-examination.

IV. POSITIONS OF THE PARTIES

The Union contends that Section 162 of the Code presumes there will not be a vote. Therefore, it requests automatic certification. The Union says that if the Board had reason to believe that the cards do not reflect the true wishes of the employees, a vote should be ordered. However, in this case, the Union states: there is clearly sufficient membership evidence to meet the 55 percent requirement; there is no question the employees were signed on the basis there would be no vote; further at the time of the campaign, the Code had been passed but not proclaimed; and finally, there is no basis on which to say the cards do not reflect the true wishes of the employees. Therefore, there is no reason to order a representation vote.

The Employer states that the vote is an acquired right and is substantive and not procedural; reference is made to *Speed-Erect Foundations and Framing Systems Ltd.*, BCLRB No. B1/93. The cards were signed under the old enactment.

The Employer requests that the Board order a vote under Section 162. It argues that the Union's approach adopts the unfair labour practice standard and is not appropriate in this case.

Section 24(1) of the Code is a second provision giving the Board discretion to order a vote. A vote would be more consonant with the purposes of the Code set out in Sections 2(1) and

2(2), which state that the employees' bargaining agent is to be the freely-chosen representative of the employees. Section 4 of the Code states employees have the right to join a union. The substantive way to determine if the employees have freely chosen the union is by holding a vote. The Employer argues the Union has the onus of proving membership evidence.

The Union replies that this is a very different situation than *Speed-Erect* and that Section 161 does not apply here; rather Section 162 is the key clause.

V. ANALYSIS

By letter dated January 25, 1993, the parties were advised of my decision to grant automatic certification pursuant to Section 23(1) of the *Labour Relations Code*. As these reasons have been prepared on an expedited basis, they are somewhat briefer than would otherwise be the case.

Section 162 of the Code reads as follows:

162. If, during the 90 day period after the coming into force of this section, a trade union applies for certification on the basis of membership in good standing evidenced by membership cards signed before the coming into force of section 22, the board may order that a representation vote be taken in accordance with the regulations.

Sections 161 and 162 are transitional provisions in the new Code. Section 162 specifically addresses the issue before me. I agree with the Union that the analysis of Section 161 outlined in *Speed-Erect, supra*, is not of assistance.

The Union applied for certification under Section 18 after the Code was proclaimed, and has at least *prima facie* met the threshold requirement of 55 percent under Section 23. Section 162 contemplates that membership cards signed *before* the coming into force of Section 22 (which provides that the determination of membership in good standing will be in accordance with the Regulation) will be acceptable as evidence of membership in good standing. Section 162 provides the Board with a discretion to order a representation vote during a transitional period of

90 days.

I find that a vote should be ordered during this transitional period where an applicant trade union relies upon cards signed prior to January 18, 1993, unless the Board is satisfied that the membership evidence is truly supportive of automatic certification, and the cards can be relied upon for that purpose. For example, if cards signed before proclamation contain the required language in Section 3(b) of the Labour Relations Regulation, and no objection is raised to question the purpose for which the cards were signed, automatic certification would likely be granted. Obviously, where "old" cards and "new" cards are filed in support of an application, and "new" cards comprise 55 percent or more of the employees in the unit, no vote should be held.

In the present case, the Union conducted its organizing campaign after the *Labour Relations Code* had been passed by the Legislature (but before proclamation). The Union offered uncontradicted evidence that when all employees signed up, with the possible exception of one (this would not affect the 55 percent threshold), they were advised *before* signing that their signature would mean the Union would apply for automatic certification. I am, therefore, able to rely on the cards as evidence that the employees wish to have the Union represent them in collective bargaining. Had this evidence not been led by the Union, a representation vote would have been ordered.

VI. DECISION

For the reasons set out above, I granted the Union automatic certification for a bargaining unit of "all employees except foremen, firebosses and persons above the rank of foremen and firebosses, office, professional and technical employees".

LABOUR RELATIONS BOARD

MARGARET ARTHUR
VICE-CHAIR AND REGISTRAR