

File No.

Decision No.

04-020

IN THE MATTER of an Application for Revocation of Certification Order under Section 20 of the Act.

BETWEEN:

EMPLOYEES OF M. F. SCHURMAN LTD

APPLICANT

AND:

INTERNATIONAL UNION OF OPERATING ENGINEERS

RESPONDENT

Don Cantelo appearing on behalf of the Applicant

Ted Crockett and Blair MacKinnon appearing on behalf of the Respondent

DECISION

Background

On the 17th day of May, 2004, an Application for Revocation of Certification Order (hereinafter called the "Application") was filed by certain employees of M. F. Schurmans Ltd. (hereinafter referred to as "the Employees"), which Application was sworn to on the 17th day of May, 2004. The Applicant applied for a Revocation of Certification Order 7-78 issued on the 24th day of May, 1978. The Application indicated that all Employees were represented by the International Union of Operating Engineers and all Employees no longer wish to be represented by the Union.

On the 24th day of May, 2004, the International Union of Operating Engineers, Local 902 (hereinafter referred to as "the Union") filed a Reply to the Application. The grounds of opposition were that:

- a) Certification Order 7-78 is not applicable to the Application;
- b) the Applicant has not demonstrated that a majority of the employees in the Union support the Application;

- c) there are 17 employees employed by M. F. Schurman (hereinafter referred to as “Schurmans”) in the steel fabrication division;
- d) the Collective Agreement covering the employees contains seniority recognition and lay off and recall provisions and all employees must be considered active members;
- e) there is no evidence of majority support; and
- f) the Union requested the Application be dismissed and a time bar imposed.

The hearing of this Application commenced on the 6th day of July, 2004 and continued on the 19th day of July, 2004.

The Employees called one witness, namely Don Cantelo, and there were nine (9) documents that were filed.

Statutes Considered

1. *Labour Act*, R.S.P.E.I. 1988 Cap. L-1, Section 20.

Texts Considered

1. *Ontario Labour Relations Board Law and Practice*, Sack and Mitchell, (Toronto, Butterworths 1985).

Evidence and Argument

On the 6th day of July, 2001, Don Cantelo provided a letter from the Chief Executive Officer of the Labour Relations Board (hereinafter referred to as “the Board”) to Don Cantelo (Exhibit A-3). The letter was dated the 4th day of March, 2003 and that letter enclosed an Application for Revocation Form and at the bottom indicated that the Certification Order was No. 7-78. Mr. Cantelo indicated in his evidence that that Certification No. was the inappropriate number and he wished to amend his Application to revoke the Certification Order 2-65 as opposed to 7-78 in order to have the appropriate number.

Mr. Cantelo advised the Board that as the date the Application was made, namely the 17th day of May, 2004, there were four (4) employees at Schurmans. At the time of the hearing on the 6th day of July, 2004, the number of employees had increased to seven (7).

Mr. Cantelo also provided the Board with a copy of an Application for Revocation of Certification Order dated the 3rd day of May, 2004 which was not filed with the Board and which document was entered as Exhibit A-9. Contained on that document were the names of various individuals who were not working and not employed at Schurmans on the 3rd day of May, 2004, but which individuals had signed the sworn document indicating they wished to be decertified. Mr. Cantelo had a new Application for Revocation of Certification Order prepared and signed which is the Application that was filed with the Board which listed the name of four (4) individuals. Those four (4) individuals were all employed at Schurmans on the date the Application was filed. As noted subsequently, three (3) other employees became employed at Schurmans, two (2) of whom had signed the previous Exhibit A-9.

During cross-examination, there was some suggestion that there was employer interference in the Application before the Board. This apparently pertained to a meeting that the Employees held in the lunchroom after hours with the permission of Schurmans. Mr. Cantelo indicated he spoke to a company representative about forming a staff association and was told by the company representative: *"We can't have any part of it."*

Mr. Cantelo indicated on several occasions that the goal of the Employees is to form a staff association. The Employees had not been promised anything by Schurmans. They fully understood that there was no guarantee that the same terms and benefits as outlined in the Collective Agreement would be in place but Mr. Cantelo was very clear that the Employees were unsatisfied with the Union representation.

After Mr. Cantelo gave his evidence, he concluded the case on behalf of the Employees.

Mr. Crockett, on behalf of the Union, requested an adjournment to allow him to contact potential witnesses that would go directly to the involvement of Schurmans. As noted previously, the matter was adjourned to the 19th day of July, 2004 at which time Mr. Crockett determined not to call any evidence.

Mr. Crockett referred, in his submissions, to a Collective Agreement that was entered into on or about the 10th day of July 2001 between Schurman Enterprises Ltd., of the first part and the International Union of Operating Engineers, Local 902, of the second part. The relevant clauses dealing with seniority include the following:

8.03 *An Employees' seniority rights shall be forfeited for any one of the following reasons:*

- a) *if he voluntarily resigns or leaves the service of the Company;*
- b) *if she is discharged for cause;*
- c) *if he is absent for three consecutive working days without first securing permission from the Company, or without reasonable cause;*
- d) *if she is continuously out of the employment of the Company for a period exceeding twelve months;*
- e) *if he fails to agree to recall within three (3) days of notification.*

...

8.09 *The Company will designate a Bulletin Board, in a conspicuous workplace location, for the use and purposes of the Union. Bulletins and Notices shall be submitted for the approval of the Company before posting.*

The seniority list provided as at September 18, 2003 listed 17 employees of Schurmans on the seniority list.

The Union indicated there was no evidence of majority support and the Board was not required to hold a vote. The Union suggested that the Application was only made by 4 employees, when in fact the unit consisted of 17 employees. The Union also suggested that because Mr. Cantelo admitted to discussions with a company representative, at best the Application was tainted in that Schurmans had knowledge and provided a meeting room for the Employees.

Issues

The issues before the Board are:

1. should the Board amend the Application to permit the correct Certification Order to be inserted; and
2. should the Board revoke the Certification Order.

Decision

Amendment

In terms of the amendment, the Board grants the motion on behalf of the Employees to amend the Application so that the Certification Order sought to be revoked would be 2-65 as opposed to 7-78.

Revocation of Application for Certification

The relevant sections of the Labour Act that deal with an application to revoke a certification order is Section 20 which states as follows:

20. (1) An employer or a trade union named in a certification order or any employee in a unit for which a trade union has been certified as bargaining agent by such certification order may apply to the board for the revocation of such certification on the ground that a majority of the employees in such unit no longer wish the trade union to act as bargaining agent on their behalf.

(2) If the Board is satisfied that the majority of the employees in such unit no longer wish the trade union to act as bargaining agent on their behalf, the board shall revoke the certification of the trade union.

(3) Where the certification of a bargaining agent is revoked under this section, the employer is not required to bargain collectively with the bargaining agent, and a collective agreement in effect at the time of the revocation of the certification of the bargaining agent is void and of no effect, but this does not prevent the bargaining agent from making an application under section 12.

(4) Sections 12 and 13 apply with the necessary changes to applications under this section. R.S.P.E.I. 1974, Cap. L-1, s.19.

While there was some allegation on the part of the Union that there was employer interference, however, the inference was taken by the Board as speculation on the part of the Union and having no basis in fact.


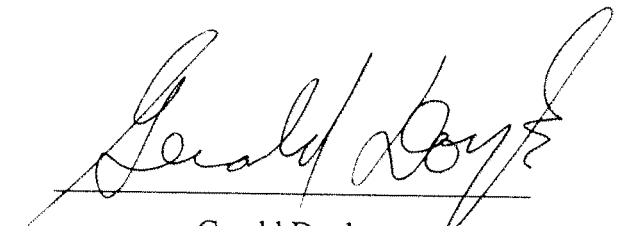
The Board has reviewed the seniority list that was filed, as well as the documents filed by Mr. Cantelo and in particular Exhibit A-9 which is his earlier Form 7 as well as the status list of Exhibit A-8. Based on the oral evidence and the above Exhibits, it would appear that ten (10) of the seventeen (17) employees who were eligible for recall as of the 18th day of September, 2003 signed documents indicating they wished to have the Certification Order revoked. Accordingly, it would appear that the Board does have evidence that a majority of Employees wished the Certification Order revoked. However, the Board was not provided with the seniority list that existed as of the 6th day of July, 2004, the date of the hearing, or the 17th day of May, 2004, being the date of Application.

The Board has determined that in a Revocation situation, employees on lay off remain eligible to vote so long as they retain a reasonable expectation of recall.

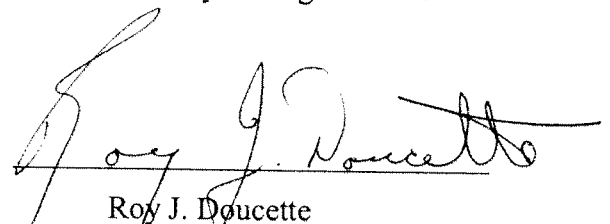
Accordingly, the Board rules that any employee who was on lay-off and eligible for recall will be entitled to vote. As such, the Board is ordering that a vote be held and that such a vote will include all present Employees and all Employees of Schurmans that are on the current seniority list and eligible for recall on the 17th day of May, 2004, being the date the Application was filed with the Board.

The Board orders that the result of the vote will determine the success or failure of the Application.

The Board thanks the parties for their presentation and the Board rules accordingly.


Alfred Fraser
Chair
Elizabeth MacFadyen
Member
Gerald Doyle
Member

This Decision made by the Prince Edward Island Labour Relations Board on the 3rd day of August, 2004 and issued under the hand of its Chief Executive Officer on the 6th day of August 2004.


Roy J. Doucette
Chief Executive Officer