THE ZEBALLOS DISTRICT MINE & MILL WORKERS UNION, LOCAL 851 ..... APPELLANT;

1966
*Mar. 11
Apr. 26

AND

THE LABOUR RELATIONS BOARD OF BRITISH COLUMBIA .....

AND

THE INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 115, BUILDING MATERIAL, CONSTRUCTION & FUEL TRUCK DRIVERS UNION, LOCAL 213 and TUNNEL AND ROCK WORKERS UNION, LOCAL 168 ..... RESPONDENTS.

ON APPEAL FROM THE COURT OF APPEAL FOR BRITISH COLUMBIA

Labour relations—Application by respondent unions to be certified for unit of employees for whom appellant union already certified—Representation vote ordered—Cancellation of vote prior to counting of ballots—Power of Board to cancel vote and to certify respondents—Whether proper notice given—Labour Relations Act, R.S.B.C. 1960, c. 205 [am. 1961, c. 31] ss. 10(1)(c), 12, 17, 24, 62(8), 65(3).

Upon the application of the respondent trade unions to be certified for a unit of employees for whom the appellant union was already certified as the bargaining representative, the Labour Relations Board of British Columbia ordered the taking of a representation vote. Prior to the completion of the vote it was suggested to the Board, on behalf of the respondents, that there had been a breach of s. 12(9) of the *Labour Relations Act* by the employer by having increased the rates of pay of the employees before the vote was taken. This increase had been made in consequence of a collective agreement between the employer and the appellant. Subsequently, the Board cancelled its decision to hold the representation vote, ordered the destruction of the ballots and certified the respondents.

On an application by way of *certiorari*, the appellant obtained an order quashing the decision of the Board to certify the respondents and quashing the certification. On appeal this judgment was reversed. On the appeal to this Court the appellant raised two points: 1. Did the Board have power, after the representation vote had been directed by it, pursuant to s. 12(3) and after the ballots had been cast, to cancel its decision, and to certify the respondents without the result of the vote being known? 2. Did the Board act without jurisdiction or exceed

*PRESENT: Taschereau C.J. and Martland, Judson, Hall and Spence JJ.

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its jurisdiction in doing what it did without giving notice to the appellant of its intention to cancel its decision as to the representation vote and of its intention to certify the respondents without such vote?

Held (Spence J. dissenting): The appeal should be dismissed.

Per Taschereau C.J. and Martland, Judson and Hall JJ.: It appeared that the reason for the decision to hold a representation vote was in order to ascertain whether a majority of the employees in the unit wished to be represented by the respondents. Whether or not a vote for that purpose was to be held was a matter for the discretion of the Board, as provided in s. 12(3)(*b*). A decision to hold such a vote was not final and absolute in view of the power conferred upon the Board by s. 65(3) to reconsider "any decision or order made by it under this Act" and to vary or cancel such decision or order.

The Board had the power to cancel its direction for the taking of the representation vote, and the position was not altered because the decision to cancel was made after the ballots had been cast but before they had been counted. The Board had the power during the period between the casting of the ballots and the counting thereof to consider facts relating to the taking of the vote, and had power to cancel the vote certainly up to the time that it had been completed by the counting of the ballots.

Whether or not the granting of the wage increase, without the permission of the Board, did or did not constitute a breach of s. 12(9), a question it was not found necessary to decide, the Board did reach the conclusion that, in view of the alteration of the conditions of employment, "the true wishes of the employees in the unit are not likely to be disclosed by a representation vote". This was a finding by the Board in respect of an issue of fact, which it was entitled to make. Having made that finding it had the right, under s. 65(3), to cancel its previous decision to hold a representation vote.

Once the decision to cancel the direction for the vote had been validly made, the position was the same as if no vote had ever been directed. In that situation, if the Board was satisfied that a majority of the employees in the unit were, at the date of application, members in good standing of the trade union, it was required by s. 12(4) to certify it. The Board was so satisfied, and stated also that it was not in doubt as to whether a majority of the employees in the unit wished to be represented by the respondents. On those findings, and in the absence of any legal requirement binding it to the outcome of the vote which it had cancelled, the certfiication of the respondents was properly made.

As to the question of notice, in the circumstances the Board had complied with the requirements of s. 62(8) and did not lose jurisdiction by failing to give to the appellant a fair opportunity to be heard.

Per Spence J., *dissenting:* Once the Board exercising the discretion given to it by s. 12(3) had directed a representational vote it was bound by the provisions of subss. (4) and (5) to either grant or refuse certification on the basis of the result of such vote. The power granted to the Board by s. 65(3) to cancel or vary its decisions was not a power to vary the provisions of the statute. Accordingly, subs. (3) of s. 65 did not permit a variation of the exact statutory provisions of s. 12(4) and (5).

Also, the Board in acting to cancel the representative vote and to certify the respondents, without adequate notice having been given to the

appellant of the intention to take such action, was in breach of s. 62(8) of the statute and so acted in excess of its jurisdiction. Its action should be quashed.

APPEAL from a judgment of the Court of Appeal for British Columbia[1], reversing a judgment of Munroe J. Appeal dismissed, Spence J. dissenting.

W. J. Wallace, for the appellant.

A. W. Mercer, for the respondent, Labour Relations Board of British Columbia.

R. E. Cocking, for the respondent trade unions.

The judgment of Taschereau C.J. and Martland, Judson and Hall JJ. was delivered by

MARTLAND J.:—The appellant is a trade union. The respondents, other than the Labour Relations Board of the Province of British Columbia (hereinafter referred to as "the Board"), are also trade unions and are hereinafter referred to as "the respondents". The matter in dispute relates to the certification by the Board of the respondents as bargaining representative for employees of Zeballos Iron Mines Limited (hereinafter referred to as "the company") for whom the appellant had previously been the bargaining representative.

The appellant had been certified by the Board on May 2, 1961, and a collective agreement between the appellant and the company was in existence at the times material to these proceedings. On January 27, 1964, notice was given by the appellant to the company to commence collective bargaining, and thereafter meetings were held between representatives of the appellant and of the company. Presumably this notice was given under s. 17 [rep. & sub. 1961, c. 31, s. 13] of the *Labour Relations Act,* R.S.B.C. 1960, c. 205, which provides as follows:

> 17. Either party to a collective agreement, whether entered into before or after the coming into force of this Act, may, within three months and not less than two months immediately preceding the date of expiry of the agreement, by written notice require the other party to the agreement to commence collective bargaining.

On or about March 23, 1964, the respondents applied to the Board for certification as the bargaining representative

[1] (1965), 53 W.W.R. 385, 54 D.L.R. (2d) 516.

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for the same unit. This application must have been made pursuant to the provisions of s. 10(1)(*c*) [am. 1961, c. 31, s. 6] of the Act, which provides:

> 10. (1) A trade-union claiming to have as members in good standing a majority of employees in a unit that is appropriate for collective bargaining may, subject to the regulations, apply to the Board to be certified for the unit in any of the following cases:
>
> . . . .
>
> (*c*) Where a collective agreement is in force, then only during the eleventh and twelfth months in each year of its term or of any renewal or continuation thereof, and during the last two months of the term of the agreement, except that a trade-union that is a party to the collective agreement but is not certified with respect to employees covered by the agreement may apply at any time.

On April 3 the registrar of the Board notified the appellant of the application by the respondents and advised that written submissions concerning the application would be considered by the Board if received by it within ten days. A written submission was made by the appellant on April 10.

As a result of the collective bargaining between the appellant and the company, on or about April 30 an agreement was reached as to terms to be incorporated in the renewal of the existing agreement, effective on May 1. These terms included, among other provisions, a wage increase of 15 cents an hour across the board, which went into effect on May 1, 1964.

Section 24 of the Act provides:

> 24. Each of the parties to a collective agreement shall forthwith, upon its execution, file one copy with the Minister.

No copy of the agreement above mentioned was filed with the Minister of Labour.

On June 5 the appellant received notice from the Board that a representation vote for the purpose of certification had been ordered by the Board, under s. 12 [am. 1961, c. 31, s. 7] of the Act, to be held on June 10. The relevant portions of s. 12 are as follows:

> 12. (1) Where a trade-union applies for certification for a unit, the Board shall determine whether the unit is appropriate for collective bargaining, and the Board may, before certification, include additional employees in, or exclude employees from, the unit.
>
> (2) The Board shall make, or cause to be made, such examination of records and other inquiries as it deems necessary, including the holding of such hearings as it deems expedient to determine the merits of any application for certification, and the Board shall prescribe the nature of the evidence that the applicant shall furnish with or in support of the

application, and the manner in which the application shall be made.

(3) If the Board is in doubt

(a) as to whether a majority of the employees in the unit were, at the date of the application, members in good standing of the trade-union making the application, the Board shall direct that a representation vote be taken;

(b) as to whether a majority of the employees in the unit wish to be represented by the trade-union making the application, the Board may direct that a representation vote be taken.

(4) If, on the taking of a representation vote under subsection (3), a majority of the ballots of all those eligible to vote are cast in favour of the trade-union, or if the Board is satisfied that a majority of the employees in the unit were, at the date of the application, members in good standing of the trade-union, the Board shall certify the trade-union for the employees in the unit.

(5) If

(a) the Board is satisfied that less than a majority of the employees in the unit were, at the date of application, members in good standing of the trade-union; or

(b) on the taking of a representation vote under subsection (3), less than a majority of the ballots of all those eligible to vote are cast in favour of the trade-union; or

(c) the Board is satisfied that the trade-union has falsely represented membership in good standing,

the Board shall not certify the trade-union for the unit.

On June 10 ballots were cast by the company's employees. On the casting of the last ballot, the scrutineer for the respondents stated that he contested the vote because a violation of the Act had taken place. Thereafter, the ballot box was sealed by the returning officer, who advised that the ballots would be counted on June 19.

On June 12 the solicitors for the respondents wrote to the Board as follows:

We wish to confirm our telephone conversation of today with you wherein we advised that on behalf of the International Union of Operating Engineers, Local 115, Teamsters, Local 213 and Tunnel & Rock Workers Union, Local 168, we oppose the representative vote held on Wednesday, June 10, 1964, at Zeballos, B.C.

We are instructed that the application for certification by the above three Unions for a unit of employees at Zeballos Iron Mines Ltd. was made March 23, 1964. The payroll date selected was May 12, 1964, for "all employees of Zeballos Iron Mines Ltd. except office employees". Further delay then resulted and the vote did not take place until June 10, 1964.

During the above period of time, the Company granted a substantial wage increase retroactive. Further we are instructed that negotiations between the management and Mine, Mill were actively carried on and subsequently ratified at a meeting of Mine, Mill on Company property.

It is our submission that the Company's violation of Section 12(9) of the Labour Relations Act and the delay in taking the vote has caused prejudice to the applicant Unions. The matter is being investigated further and as soon as we have further details, we will communicate with you.

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A copy of this letter was sent by the registrar of the Board to the appellant on June 19, advising that, if the appellant wished to make representations concerning the matter, they should be in the registrar's hands on or before June 29. The appellant replied to this letter on June 25 as follows:

I am in receipt of your communication of June 19th, 1964 and the attached copy of a letter from Mr. McTaggart.

We wish to submit for your information that notice from the Union to commence collective bargaining was given to the Company on January 27, 1964 and acknowledged by the Company, January 31, 1964.

Copies of this correspondence is enclosed.

Several bargaining meetings were held in Vancouver and at Zeballos.

These meetings resulted in a substantial improvement in wages and contract provisions. This, in our opinion, can in no way be misconstrued as a violation of any Section of the Labour Relations Act.

The Board sent a letter to the appellant on July 10 reading as follows:

On May 12th, 1964, the Labour Relations Board directed that a representation vote be taken upon an application of the International Union of Operating Engineers, Local No. 115; Building Material, Construction and Fuel Truck Drivers Union Local No. 213; and Tunnel and Rock Workers, Local No. 168, to be certified for a unit employed by Zeballos Iron Mines Limited. Prior to the completion of the vote, and while the application for certification was pending, the Board was informed that the employer had, contrary to Section 12(9) of the Labour Relations Act, altered conditions of employment of the employees affected by the application.

The Board is satisfied that under this circumstance the true wishes of the employees in the unit are not likely to be disclosed by a representation vote and therefore, pursuant to Section 65(3) of the Labour Relations Act, it has reconsidered its decision to take the said vote and has cancelled the said decision of May 12th, 1964. It has further directed that the ballots cast on June 19th, 1964, be destroyed.

As the Board is satisfied that a majority of the employees in the unit were, at the date of application for certification, members in good standing of the applicant trade-unions and is not in doubt as to whether a majority of the employees in the unit wish to be represented by the applicant trade-unions, it has, pursuant to Section 12(4) of the Labour Relations Act, certified the trade-unions. A copy of the certification is enclosed.

Sections 12(9) and 65(3) [enacted 1961, c. 31, s. 37 (*c*)] of the Act, to which reference is made, provide as follows:

12. (9) Where an application for certification is pending, no trade-union or person affected by the application shall declare or engage in a strike, and no employers' organization or employer shall declare a lockout, and no employer, without the written permission of the Board, shall increase or decrease rates of pay or alter any term or condition of employment of the employees affected by the application.

65. (3) The Board may, upon the petition of any employer, employers' organization, trade-union, or other person, or of its own motion,

reconsider any decision or order made by it under this Act, and may vary or cancel any such decision or order, and for the purposes of the Act the certification of a trade-union is a decision of the Board.

The ballots were destroyed by the returning officer on the morning of July 14, prior to the obtaining, on the afternoon of that day, of an *ex parte* injunction by the appellant's solicitors to restrain the destruction of the ballots. The appellant then applied, by way of *certiorari*, claiming that the Board lacked jurisdiction, or had exceeded its jurisdiction in granting certification other than in accordance with the outcome of the vote, and obtained an order quashing the decision of the Board to certify the respondents and quashing the certification.

On appeal[1] this judgment was reversed, Davey J.A. dissenting. Leave to appeal to this Court was granted by the Court of Appeal of British Columbia.

The appellant has raised two points on the appeal:

1. Did the Board have power, after a representation vote had been directed by it, pursuant to s. 12(3) and after the ballots had been cast, to cancel its decision, and to certify the respondents without the result of the vote being known?

2. Did the Board act without jurisdiction or exceed its jurisdiction in doing what it did without giving notice to the appellant of its intention to cancel its decision as to the representation vote and of its intention to certify the respondents without such vote?

As to the first point, the contention of the respondents is that the Board had the power to cancel its decision by virtue of s. 65(3). The appellant submits that that subsection cannot be invoked if the Board is precluded from cancelling its decision by a specific provision of the Act.

The issue here is as to whether the terms of s. 12(3) and (4) are to be construed so as to bind the Board, once a representation vote has been directed, to complete that vote and abide by its result, or whether the decision to take a vote, as in the case of decisions on other matters, can be cancelled or varied under s. 65(3).

The certification of a trade union as a bargaining representative for a unit of employees is a matter which the Act places in the hands of the Board. Under s. 12(2) it may

[1] (1965), 53 W.W.R. 385, 54 D.L.R. (2d) 516.

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make such examination of records and other inquiries as it deems necessary.

A representation vote is only taken if the Board is in doubt in respect of one or other of the matters described in paras. (*a*) and (*b*) of subs. (3) of s. 12. Paragraph (*a*) requires a vote if the Board is in doubt as to whether a majority of the employees in the unit were, at the date of application, members in good standing of the applicant union. Paragraph (*b*) gives to the Board a discretion to direct a vote if it is in doubt as to whether a majority of the employees in the unit wish to be represented by the applicant trade union.

Paragraph (*b*) was added to s. 12 when that section was re-enacted in 1961 (Statutes of British Columbia, 1961, c. 31, s. 7). Its purpose would appear to be to enable the Board, at its discretion, to direct a representation vote even though a majority of employees in a unit are members in good standing of the applicant trade union, at the time of application, if it is in doubt as to whether a majority of the employees in that unit wish to be represented by that trade union.

It would appear, from the material before us, that, in the present case, the Board directed a representation vote under para (*b*). In its letter to the appellant, dated July 10, 1964, the Board says:

> The Board is satisfied that under this circumstance *the true wishes of the employees in the unit are not likely to be disclosed* by a representation vote and therefore, pursuant to Section 65(3) of the Labour Relations Act, it has reconsidered its decision to take the said vote and has cancelled the said decision of May 12th, 1964.

(The italics are my own.)

This indicates that the decision of May 12 to hold a representation vote was in order to ascertain whether a majority of the employees in the unit wished to be represented by the respondents. That this was the reason for the Board's direction is also a reasonable inference from the fact that the Board was being asked, not to certify a trade union for the first time, but to certify the respondents when there was already a certified trade union in existence.

Whether or not a vote for that purpose was to be held was a matter for the discretion of the Board. It was a means which the Board might use in order to resolve a

doubt regarding that question. A decision to hold such a vote was not, in my opinion, final and absolute in view of the power conferred upon the Board by s. 65(3) to reconsider "any decision or order made by it under this Act" and to vary or cancel such decision or order.

The scope of the power conferred under that subsection has been considered in this Court in *Labour Relations Board et al. v. Oliver Co-operative Growers Exchange*[1], and in *Bakery and Confectionery Workers International Union of America Local No. 468 v. White Lunch Limited*[2]. Both of those cases dealt with variations of an existing order, but in describing the extent of the power, Judson J., in the earlier case at p. 12, refers to it as "a plenary independent power" and as "a very necessary power to enable the Board to do its work efficiently".

In my opinion the Board had the power to cancel its direction for the taking of the representation vote. Nor do I think that the position is altered because the decision to cancel was made after the ballots had been cast but before they had been counted. In the present case the Board only became aware of circumstances which led it to cancel its direction after the ballots had been cast. The Board had fixed June 19 as the day for the counting of the ballots, nine days after the date which had been set for the voting. In my view, it had the power during that period to consider facts relating to the taking of the vote, and had power to cancel the vote certainly up to the time that it had been completed by the counting of the ballots. Whether or not it could have done so thereafter on the basis of irregularities in the taking of the vote, or for any other reason, is an issue which does not arise in the present case.

The decision of the Board to cancel the direction for the vote was made following the receipt of the letter of June 12 from the solicitors for the respondents suggesting that there had been a breach of s. 12(9) of the Act by the company by having increased the rates of pay of the employees before the vote was taken. This increase had, of course, been made from May 1 in consequence of the agreement between the company and the appellant. Sheppard J.A. in the Court below was of the opinion that s. 12(9) had no application to a wage increase granted as a consequence of collective

[1] [1963] S.C.R. 7. [2] [1966] S.C.R. 282.

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bargaining carried on pursuant to the provisions of s. 19 of the Act, which requires the parties to a collective agreement to commence bargaining within five days after notice given by one of them under s. 17 (previously quoted). This view was shared by the other members of the Court.

The situation which arises where a trade union seeks certification for a unit of employees which already has a bargaining representative, which is a party to an existing collective agreement with the employer, presents problems. Under s. 17, notice to commence bargaining, where there is a collective agreement in effect, may be given within three months, but not less than two months immediately preceding the expiry date of the agreement. But under s. 10(1) the new applicant union cannot apply save in the last two months of each year of the agreement or of the term of the agreement. This means that the application for certification may often occur while collective bargaining is in progress between the employer and the trade union previously certified.

Section 12(9) permits a pay increase with the written permission of the Board, but, otherwise, prohibits the granting of such an increase *where an application for certification is pending*. The application for certification by the respondents was pending on May 1, 1964, when the wage increase took effect. Section 24 requires the filing of a copy of a collective agreement forthwith, upon its execution, with the Minister.

In the present case no copy of the agreement of April 30, 1964, had been filed, and there is nothing to indicate that the Board was aware of the pay increase granted by the company, effective May 1, until after the votes had been cast on June 10. Whether or not the granting of the increase, without permission of the Board, did or did not constitute a breach of s. 12(9), a question which I do not find it necessary to decide, the Board did reach the conclusion that, in view of the alteration of the conditions of employment, "the true wishes of the employees in the unit are not likely to be disclosed by a representation vote." This was, in my opinion, a finding by the Board in respect of an issue of fact, which it was entitled to make. Having made that finding it had the right, under s. 65(3), to cancel its previous decision to hold a representation vote.

Once the decision to cancel the direction for the vote had been validly made, the position was the same as if no vote had ever been directed. In that situation, if the Board was satisfied that a majority of the employees in the unit were, at the date of application, members in good standing of the trade union, it was required by s. 12(4) to certify it. The Board was so satisfied, and stated also that it was not in doubt as to whether a majority of the employees in the unit wished to be represented by the respondents. On those findings, and in the absence of any legal requirement binding it to the outcome of the vote which it had cancelled, the certification of the respondents was properly made.

The only other issue is as to whether or not proper notice had been given by the Board to the appellant. Section 62(8) of the Act provides that:

62. (8) The Board shall determine its own procedure, but shall in every case give an opportunity to all interested parties to present evidence and make representation.

The "case" in question before the Board was the application of the respondents to be certified. The Board gave notice of that application to the appellant, and gave it the opportunity to make written submissions. A written submission opposing the application was made.

To enable it to resolve a doubt which it then had as to whether a majority of employees in the unit wished to be represented by the respondents, the Board directed the taking of the representation vote. It received a submission from the solicitors for the respondents regarding that vote and it thereupon notified the appellant, enclosing a copy of that submission. The appellant was advised that it could make representations regarding that matter within a certain time. A written representation was made by the appellant. Thereafter the Board made its decision as to the cancellation of the representation vote and the certification of the respondents.

I agree with the conclusion of the majority in the Court below that in these circumstances the Board did not lose jurisdiction by failing to give to the appellant a fair opportunity to be heard. The Board did comply with the requirements of s. 62(8).

For these reasons, in my opinion, this appeal should be dismissed, with costs to the respondent trade unions.

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SPENCE J. (*dissenting*):—I have had the privilege of reading the reasons of my brother Martland and I need not repeat the facts as he has set them out with sufficient clarity.

In my view, the appeal should be allowed for both of the grounds raised by counsel for the appellant. Firstly, I am of the view that the Board in the exercise of its powers under s. 65(3) of the *Labour Relations Act* was only permitted to act where under the provisions of the statute it was given a discretion. Therefore, that section did not permit it to contravene other statutory provisions. The Board has a discretion under s. 12(1) to determine whether the trade union which applied for certification was an appropriate unit. The Board has a further discretion under subs. (2) of s. 12 to make such examinations as it deemed fit and to prescribe the nature of the evidence that the applicant should furnish in support of an application for certification. By subs. (3) of s. 12 the Board was directed, if it were in doubt as to whether the majority of the employees were at the date of the application members in good standing of the trade union making the application or whether the majority of the employees in the unit wished to be represented by that trade union, to direct a representational vote to be taken. The Board in this case found that such a doubt existed and therefore exercising the power set forth in s. 12(3) of the statute as aforesaid, directed the taking of the representational vote. By s. 12(5)(*b*) if, on the taking of a representational vote under subs. (3), less than the majority of the ballots of all those eligible to vote are cast in favour of the trade union the Board shall not certify the trade union for the unit.

On the other hand, by subs. (4) of s. 12, if, on the taking of a representational vote, a majority of the ballots of those eligible to vote were cast in favour of the trade union, then the Board shall certify the trade union for the employees in the union. I am of the opinion that once the Board exercising the discretion given to it by s. 12(3) had directed a representational vote it was bound by the provisions of subss. (4) and (5) to either grant or refuse certification on the basis of the result of such vote.

The power granted by s. 65(3) of the statute is, as put by Judson J. in *Labour Relations Board et al. v. Oliver*

Co-operative Growers Exchange[1], at p. 12, a "plenary, independent power" and a "very necessary power to enable the board to do its work efficiently". It is not, however, a power to vary the provisions of the statute. I need not go so far as decisions in both British Columbia and Ontario in limiting the provisions to where no specific provision has been made by the statute, *e.g.* Bull J.A. in *Regina v. B.C. Labour Relations Board, ex parte White Lunch Ltd.*[2], at p. 80, but merely take the position that subs. (3) of s. 65 does not permit a variation of the exact statutory provisions of s. 12(4) and (5).

I also share the view expressed by Davey J.A. in his dissenting reasons given in the Court of Appeal of British Columbia that the action of the Labour Relations Board should be quashed because no adequate notice of the intention to take such action was given to the appellant. In this case, the Court need not consider the common law principle that every person has the right to be heard and that no judicial or quasi-judicial decision should be made against him without notice, as by the very provisions of the statute, *i.e.* s. 62(8), "the Board shall determine its own procedure but shall in every case give an opportunity to all interested persons to present evidence and make representation".

In the present case, as my brother Martland has pointed out, on June 12, the solicitor for the respondents wrote to the Board stating that they confirmed their telephone conversation opposing the representative vote, alleging a breach of s. 12(9) of the statute, and concluding "matter is being investigated further and as soon as we have further details we will communicate with you". The respondent Board forwarded to the appellant a copy of that letter in its letter of June 19 advising that if the appellant wished to make representations it should do so on or before June 29. The appellant did make representations simply alleging that the action of concluding a collective agreement with the increase in wages which was included therein was part of the ordinary procedure under the statute. Then, without further notice, the Board on July 10 notified the appellant that it was cancelling the representative vote and was certifying the respondents.

[1] [1963] S.C.R. 7.

[2] (1965), 51 D.L.R. 72.

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As Davey J.A. pointed out, the action of the Board in purporting, under s. 65(3) of the statute, to cancel its previous order for a representational vote and to certify the respondents was not part of the proceeding for such representational vote at all but was an extraordinary move to rescind something already ordered and on which the parties were entitled to rely in the absence of notice to the contrary. I adopt the statement of Davey J.A. "But it is not too much to expect the board to give notice of proceedings to reconsider and rescind decisions already taken and promulgated, couched in language sufficiently explicit to inform a layman of what is to be considered, and the case to be met". I am, therefore, of the opinion that the Board in acting to cancel the representative vote and to certify the respondents was in breach of s. 62(8) of the statute and so acted in excess of its jurisdiction. Its action should be quashed.

For these reasons, I would allow the appeal with costs against the respondent union only and direct the restoration of the order of Munroe J. made on August 24, 1964.

Appeal dismissed with costs, SPENCE J. *dissenting.*

Solicitors for the appellant: Bull, Housser & Tupper, Vancouver.

Solicitors for the respondent, Labour Relations Board of British Columbia: Paine, Edmonds, Mercer, Smith & Williams, Vancouver.

Solicitors for the respondent trade unions: McTaggart, Ellis, Melvin & Cocking, Vancouver.