1965
*Dec. 6
1966
Jan. 25

BAKERY AND CONFECTIONERY WORKERS INTERNATIONAL UNION OF AMERICA LOCAL No. 468, and MATTI SALMI and SVEND NIELSEN (*Defendants*) .. APPELLANTS;

AND

WHITE LUNCH LIMITED (*Prosecutor*) .. RESPONDENT;

AND

THE LABOUR RELATIONS BOARD OF BRITISH COLUMBIA (*Defendant*).

ON APPEAL FROM THE COURT OF APPEAL FOR BRITISH COLUMBIA

Labour relations—Order certifying local as trade union for unit of company's employees—Unfair practices and reinstatement orders issued—Voluntary liquidation of company—Orders amended by substituting related company as named employer—Jurisdiction of Labour Relations Board—Labour Relations Act, R.S.B.C. 1960, c. 205, s. 65(3) [*am. 1961, c. 31*].

The respondent corporation was engaged in the restaurant business and by itself or related companies carried on the business of a bakery as well as retail outlets. The respondent and C Ltd. were closely related companies in that the ownership and management of each were the same and their operations were interrelated. On September 26, 1962, the appellant union local applied to the Labour Relations Board (B.C.) for certification for bakers employed by the respondent. On receipt of notice of this application, the respondent, by its solicitors, advised the Board that it did not have a bakery department, that the bakery was owned and operated by C Ltd. Thereupon the Board notified C Ltd. that the local had applied for certification for all employees employed in its bakery department. On October 16, 1962, the Board certified the local as the trade union for the said employees. Notice was then given by the local to C Ltd. to commence collective bargaining and such bargaining was commenced and continued until November 24, 1962, when the employees were discharged. Meanwhile, the Board on November 8, 1962, ordered C Ltd. to cease the coercion or intimidation of its employees and on the same date ordered the company to reinstate two employees, the appellants S and N.

On November 24, 1962, C Ltd. went into voluntary liquidation, and, when so advised, the local along with S and N applied to the Board to have the order of October 16 and the three orders of November 8 amended by substituting the respondent as the named employer. The orders were accordingly amended by the Board on February 13, 1963, purportedly under s. 65(3) of the *Labour Relations Act*, R.S.B.C. 1960,

*PRESENT: Abbott, Martland, Judson, Hall and Spence JJ.

c. 205, as amended by 1961 (B.C.), c. 31. Subsequently, in *certiorari* proceedings, the four orders dated February 13, 1963, were quashed. An appeal from the judgment of the judge of first instance was dismissed by the Court of Appeal and the appellants then appealed to this Court.

Held: The appeal should be allowed.

If the Board had jurisdiction to make the orders in question, this Court would not inquire into the merits of the decisions made. By s. 65(3) of the *Labour Relations Act* the Board was given power to vary or cancel any decision or order made under the provisions of the section. The procedure of the Board under s. 65(3) was correct and the orders were properly made. The Board was free to act or not act on the evidence before it as it saw fit and by statute the Board's decision was final and conclusive. This Court would not and must not interfere in what has been done within the Board's jurisdiction. *Rex v. Nat Bell Liquors Ltd.*, [1922] 2 A.C. 128 referred to; *Labour Relations Board et al. v. Oliver Co-operative Growers Exchange,* [1963] S.C.R. 7, applied.

The view expressed in the Court below that the word "vary" in s. 65(3) cannot apply retroactively was not accepted. It has not such a limited meaning and circumstances will frequently arise where it must have a retroactive effect. The present case was a classical example.

The Board had jurisdiction to entertain the application to vary. Nothing in the record or in the affidavits showed that it lost jurisdiction for any of the reasons which the law recognizes as ousting jurisdiction, *i.e.*, bias, interest, fraud, denial of natural justice or want of qualification.

APPEAL from a judgment of the Court of Appeal for British Columbia[1], dismissing an appeal from a judgment of Sullivan J. quashing four orders of the British Columbia Labour Relations Board. Appeal allowed.

A. B. Macdonald, for the appellants.

Hon. C. H. Locke, Q.C., and *H. S. Mahon,* for the respondent.

The judgment of the Court was delivered by

HALL J.:—This is an appeal from the Court of Appeal of British Columbia[1] which sustained an order by Sullivan J. in *certiorari* proceedings quashing four orders of the Labour Relations Board dated February 13, 1963. These orders purport to have been made under s. 65(3) of the *Labour Relations Act,* R.S.B.C. 1960, c. 205, as amended by 1961, c. 31. That section reads:

> (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.

[1] (1965), 51 D.L.R. (2d) 72, *sub nom. Regina v. B.C. Labour Relations Board, Ex parte White Lunch Ltd.*

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The original orders which the orders of February 13, 1963, purported to amend were made on October 16, 1962, and November 8, 1962. The effect of the amendment in each case was to substitute as the employer named in each order the respondent, White Lunch Limited, in place of Clancy's Pastries Limited which had gone into voluntary liquidation on November 24, 1962, in the circumstances later set out.

It is necessary to follow closely the events as they occurred to determine if the Labour Relations Board had jurisdiction to amend the said orders as it purported to do on February 13, 1963.

The respondent, White Lunch Limited, is a corporation engaged in the restaurant business, and by itself or related companies carried on the business of a bakery as well as retail outlets for bakery products. Clancy's Pastries Limited was incorporated on June 24, 1947. It was closely related to the respondent company in that:

(*a*) Their shares were owned by the same individuals.

(*b*) They had the same general manager, Keith T. Sorensen and the same president, Clarence L. Sorensen.

(*c*) Their operations were interrelated, as bakers, retail stores or restaurants.

From December 30, 1949, to September 18, 1962, the Cafeteria and Coffee Shop Employees Association had been certified as the bargaining authority for a unit of employees of Clancy's Pastries Limited. On September 18, 1962, the Labour Relations Board (hereinafter referred to as the "Board") cancelled that certification upon being satisfied that said Association had ceased to represent the employees of the unit. This terminated any collective bargaining agreement then in effect.

That was the situation when on September 26, 1962, the appellant Local 468 applied to the Board for certification

for bakers employed by the respondent. Due notice of the application was given to the respondent. That notice read as follows:

(COAT OF ARMS)
THE GOVERNMENT OF THE
PROVINCE OF BRITISH COLUMBIA
LABOUR RELATIONS BOARD
DEPARTMENT OF LABOUR

White Lunch Limited,
(Bakery Department)
124 West Hastings St.,
Vancouver, B.C.

September 26th, 1962,
Victoria, B.C.

Dear Sir:

This is to advise you that the Bakery and Confectionery Workers' International Union of America, Local No. 468
has applied to be certified for a unit of employees of White Lunch Limited, (Bakery Department)
being all employees
employed in the bakery department at 124 West Hastings Street Vancouver, B.C.

An officer of the Department of Labour will investigate to learn the merits of this application, and will apply to you for certain information. Your co-operation in assisting him is solicited.

Written submission concerning the above application will be considered by the Labour Relations Board if received in this office within ten (10) days of the date of this notice.

Enclosed is a copy of a notice which you are required to post and keep posted for five (5) consecutive working days in a conspicuous place in your establishment, so that all employees affected thereby have ready access to and see the same.

Yours truly,
(s) "W. B. Marvey"
for D. W. Coton,
Registrar.

No question arises as to the jurisdiction of the Board to entertain this application nor is the validity of the *Labour Relations Act* challenged in any way. Everything that transpired subsequent to this time is relevant only on the question as to whether the Board lost jurisdiction or acted

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in excess of its jurisdiction in the steps it subsequently took or the orders it made which are now the subject of this litigation.

On receipt of the notice quoted above, the respondent by its solicitors, Messrs. Rae & Mahon, wrote the Board under date of October 1, 1962, as follows:

Registrar,
Department of Labour,
Labour Relations Board,
Parliament Buildings,
Victoria, B.C. October 1st, 1962.

Dear Sir:—

Re: White Lunch Limited, Bakery Department and Bakery & Confectionery Workers' International Union of America, Local No. 468

Your letter of September 26th to White Lunch Limited, Bakery Department, has been received and the notice required to be posted on the notice board has been so posted.

You already have had an investigation into Clancy's Pastries Limited for which bargaining authority was issued to Clancy's Pastries Limited. I understand this has been decertified.

White Lunch Limited has no Bakery Department. The bakery and the outlets are owned and operated by Clancy's Pastries Limited.

Collective agreement was entered into between the Cafeteria and Coffee Shop Employees Association of Vancouver, B.C. and Clancy's Pastries Limited on June 6th, 1961, which agreement is still in force.

It would appear that this application should have to do with Clancy's Pastries Limited, not White Lunch Limited, Bakery Department.

Yours truly,
RAE & MAHON
Per _____
H. S. Mahon

Thereupon the Board notified Clancy's Pastries Limited on October 2, 1962, as follows:

Clancy's Pastries Limited,
133 West Pender Street,
Vancouver, B.C.

October 2nd, 1962
Victoria, B.C.

Dear Sir:

This is to advise you that the Bakery and Confectionery Workers International Union of America, Local No. 468
has applied to be certified for a unit of employees of Clancy's Pastries Limited

being all employees employed in the bakery department at 124 West Hastings St., Vancouver, B.C.
An officer of the Department of Labour will investigate to learn the merits of this application, and will apply to you for certain information. Your co-operation in assisting him is solicited.
Enclosed is a copy of a notice which you are required to post and keep posted for five (5) consecutive working days in a conspicuous place in your establishment, so that all employees affected thereby have ready access to and see the same.

Yours truly,
(s) "D. W. Coton"
D. W. Coton,
Registrar.

There is no evidence that the original application for certification, notice of which had been given the respondent, was withdrawn or abandoned. That application and the notice of October 2, 1962, were considered by the Board on October 16, 1962, when it made the following order:

(COAT OF ARMS)
THE GOVERNMENT OF THE
PROVINCE OF BRITISH COLUMBIA
DEPARTMENT OF LABOUR
LABOUR RELATIONS ACT

CERTIFICATION

The LABOUR RELATIONS BOARD has determined that the employees of

Clancy's Pastries Limited,
133 W. Pender Street, Vancouver, B.C.

EMPLOYED in the bakery department at 124 West Hastings Street, Vancouver, B.C.
except those excluded by the Act,
are a unit appropriate for collective bargaining, and is satisfied that the Bakery and Confectionery Workers' International Union of America, Local No. 468,
has complied with the requirements of the Act, and for the purposes of collective bargaining

THEREFORE HEREBY CERTIFIED

it . . . as the trade union(s) for all the employees in the said unit.
Given at Victoria, B.C. this 16th day of October, A.D. 1962.

LABOUR RELATIONS BOARD
By "W. H. SANDS"
Chairman

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Upon this order having been made, notice was given by Local 468 on October 10, 1962, to Clancy's to commence collective bargaining. Bargaining was commenced, some wage increase being offered but nothing else. Bargaining continued until November 24, 1962, when the employees were discharged.

Meanwhile differences had arisen. On October 10, 1962, the Secretary of Local 468 complained to the Board under s. 4(2)(*c*) of the *Labour Relations Act* that Clancy's was seeking by intimidation, by dismissal, by threat of dismissal, or by any other kind of threat to prevent the employees from organizing into a union. The Board heard this complaint and on November 8, 1962, made the following order:

(COAT OF ARMS)
THE GOVERNMENT OF THE
PROVINCE OF BRITISH COLUMBIA
DEPARTMENT OF LABOUR
LABOUR RELATIONS BOARD
VICTORIA

ORDER

Pursuant to Section 7 of the Labour Relations Act, the Labour Relations Board directs Clancy's Pastries Limited to cease using coercion or intimidation of any kind that could reasonably have the effect of compelling or inducing any person to refrain from becoming or continuing to be a member of a trade-union.

Made and Given at Victoria, B.C., this 8th day of November, A.D. 1962.

LABOUR RELATIONS BOARD
By "W. H. SANDS"
Chairman

In this same period other conflicts arose. Two employees, the appellants Salmi and Nielsen, complained to the Board that they had been discharged in contravention of s. 4(2)(*d*) of the *Labour Relations Act*. Their complaints were heard by the Board which also on November 8, 1962, made the following order in respect of the appellant Nielsen:

(COAT OF ARMS)
THE GOVERNMENT OF THE
PROVINCE OF BRITISH COLUMBIA
DEPARTMENT OF LABOUR
LABOUR RELATIONS BOARD
VICTORIA

ORDER

WHEREAS on inquiry the Labour Relations Board is satisfied that Clancy's Pastries Limited, an employer, has done an act prohibited by Section 4(2)(*d*) of the Labour Relations Act, in that it discharged Svend Nielsen, an employee, contrary to the provisions thereof;

NOW THEREFORE, pursuant to Section 7(4) of the said Act, the Labour Relations Board hereby orders Clancy's Pastries Limited to cease doing the act prohibited, and directs it to rectify the act by forthwith reinstating the said Svend Nielsen, and further directs Clancy's Pastries Limited to pay to Svend Nielsen a sum equal to the wages lost by reason of his discharge.

Made and Given at Victoria, B.C., this 8th day of November, A.D. 1962.

LABOUR RELATIONS BOARD
By "W. H. SANDS"
Chairman

and on the same day made an identical order in respect of the appellant Salmi.

These three orders of November 8 and the order of October 16 are the orders which the Board purported to amend on February 13, 1963. The jurisdiction of the Board to make the three orders of November 8, 1962, has not been questioned.

The applications to amend were made after the appellants became aware that Clancy's had gone into voluntary liquidation.

It is relevant to review the events which relate particularly to Clancy's going into voluntary liquidation.

When the first steps were being taken by Local 468 to organize the employees in question here into a bargaining unit and to be certified as the trade union for all the employees of the said unit, which was in August 1962, some rumour gained credence that Clancy's would go out of business. This acquires some significance when considered

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along with the respondent's reply to the application for certification that Clancy's was the employer and not the respondent. The solicitors for the respondent were at some pains to deny that any such step was being contemplated in their letter of October 12, 1962, to the Board. That letter read in part:

> My instructions are that some time in August a rumor circulated through Clancy's Pastries Limited that the bakery was to be closed. As a result of this, one of the managers was instructed to inform the bakery employees that the rumor was untrue, that the bakery was not to be closed. Where the rumor originated is unknown, but apparently it originated with some company supplier.

The fact is that very soon after the certification order of October 16 was made, steps were instituted to wind up Clancy's. The resolution to go into voluntary liquidation was passed by the shareholders of the company at a meeting on November 24. That meeting required shareholders to have not less than 14 days' notice of the special resolution. (*Companies Act*, R.S.B.C. 1960, c. 67, s. 173(4)). Yet nothing was said about this impending voluntary liquidation when the parties were before the Board on November 8. Nothing was said to the employees about the company going into liquidation when the employees were discharged on November 24. The first intimation to the Board and to the employees of the liquidation proceedings was contained in the solicitors' letter of December 13, 1962, when the fact of being in liquidation was given as a defence to a complaint that the employees dismissed on November 24 had been discharged unlawfully. The reason for liquidation was stated by Keith T. Sorensen, the company's general manager at pp. 95 and 96 of the case as follows:

98 Q. When you say that Clancy's Pastries Limited voluntarily wound up in paragraph 11 of your affidavit, by special resolution. Who initiated that winding up? How did it come up?

A. Well, a meeting of the shareholders was called.

99 Q. When was that? On the date this resolution was passed?

A. Yes.

100 Q. Was the meeting called for this purpose, to consider winding up?

A. Yes. It was called to decide whether the company, Clancy's Pastries Limited, should continue operation or not, and at the

> meeting it was decided that in view of the fact that the offer which we had made which we considered to be the highest offer we could make and still make a profit, that when that was refused, we decided, the shareholders decided that there was no point in continuing in business, so that—

When advised of the liquidation of Clancy's, Local 468, along with the appellants Salmi and Nielsen applied to the Board to have the order of October 16 and the three orders of November 8 amended by substituting the respondent as the named employer and for variance of the certificate of October 16, 1962, to name the employer as White Lunch Limited.

The Board fixed Wednesday, February 13, 1963, at 2:00 p.m. in the Board Room in Vancouver as the date, time and place of the hearing to amend the orders. The respondent was represented at this hearing both by counsel and by its general manager.

After hearing evidence including Exhibit W to the affidavit of Clarence L. Sorensen which produced a T4 Income Tax slip in respect of the appellant Nielsen which read as follows:

CANADA
T4-1960
Supplementary

Svend Nielsen 3081 East 8th Ave. Vancouver, B.C.			White Lunch Limited 133 West Pender St. Vancouver, B.C.
238-165	2500	12	4174.83

WHITE LUNCH LIMITED
Clarence L. Sorensen President
Thomas Sorensen Vice President
Gunde E. Frostrup Sec. Treas.
Keith Sorensen General Manager

and a letter dated June 15, 1962, as follows:

June 15, 1962

TO WHOM IT MAY CONCERN:

This is to verify that the bearer of this letter Svend Nielsen of 3081 East 8th Avenue, is an employee of our Company. He is a baker in our bakery and has worked there since October 27, 1958.

WHITE LUNCH LIMITED
"Frances E. Reynolds"
(Miss) Frances E. Reynolds
Interviewer

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the Board made the orders in question here.

If the Board had jurisdiction, this Court will not inquire into the merits of the decisions made. Section 65 under which the Board purported to act contains a privative clause which reads in part:

> 65. (1) If in any proceeding before the Board a question arises under this Act as to whether
>
> (*a*) a person is an employer or employee;
>
> * * *
>
> (*e*) A person is or what persons are parties to a collective agreement;
>
> the Board shall decide the question, and its decision shall be final and conclusive.

The provisions of s. 65(3) read:

> (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 respondent's main contention is that s. 65(3) does not give the Board jurisdiction to amend the orders previously made in the manner done on February 13, 1962. Counsel for the respondent, citing well-known authorities, emphasized that the provisions of the *Labour Relations Act* being in derogation of common law rights should be strictly construed. On the other hand, counsel for the appellants urged that the *Labour Relations Act* was remedial legislation and should be liberally construed.

Whatever merit the arguments of the respondent had at the beginning of labour relations legislation, it seems to me that in the stage of industrial development now existing it must be accepted that legislation to achieve industrial peace and to provide a forum for the quick determination of labour-management disputes is legislation in the public interest, beneficial to employee and employer and not something to be whittled to a minimum or narrow interpretation in the face of the expressed will of legislatures which, in enacting such legislation, were aware that common law rights were being altered because of industrial development and mass employment which rendered illusory the so-called

right of the individual to bargain individually with the corporate employer of the mid-twentieth century.

The language of s. 65(3) is clear. The Board has been given power to vary or cancel any decision or order made under the provisions of the section. The remarks of Judson J. in *Labour Relations Board et al. v. Oliver Co-operative Growers Exchange*[1] are applicable here. In that case, some nine Union Locals had been certified for a unit employed by twenty-three employers in thirty packing houses in the Okanagan Valley. The nine Locals resolved to merge and became part of one new Union under the name of Oliver Co-operative Growers Exchange. The new Union applied under s. 65(2) (now 65(3)) of the *Labour Relations Act* to amend the certificate to substitute its name for that of the locals of the old Union. It followed the result would necessarily be the substitution of a new party in the Certificate of Bargaining Authority. In these circumstances, Judson J. said at p. 11:

> The majority in the Court of Appeal held that the Board's power under s. 65(2) and regulation 9(*a*) was limited to the substitution of a new name for an old and that the word "vary" in s. 65(2) could not support the substitution of another union for that set out in a Certificate of Bargaining Authority. That would amount to a new and different certification, a replacement of one union by another, a change that could only be brought about by following the procedure laid down by ss. 10 and 12. The decision is that Local 1572, being a new union, should have applied for certification and not variation of an existing certificate and that variation of a certificate in the circumstances of this case was beyond the powers of the Board. The learned judge of first instance and Davey J.A., in the Court of Appeal, were of a contrary opinion and held that the Board had jurisdiction under s. 65(2). I am of the opinion that this is the correct view to take of the Act.
>
> There is no dispute that the procedure of the Board under s. 65(2) was correct. Every interested party had knowledge of what was being done and was given an opportunity to be heard. It is of some significance that out of 23 employers, only this particular respondent-employer opposed the application. That, of course, does not cure a defect if it is one of lack of jurisdiction.
>
> It is equally beyond dispute that no attempt was made to proceed under ss. 10 and 12 of the Act dealing with certification and decertification. The gist of the decision of Davey J.A., with which I fully agree, is that it was unnecessary to proceed under ss. 10 and 12 and that the certification

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

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procedures of s. 10 and s. 12 of the Act were appropriate when a union seeks initial certification or contending unions seek certification but not to the case of a successor union resulting from a merger or reorganization. He held that s. 65(2) conferred upon the Board an entirely independent power to vary or revoke a former order in appropriate circumstances and that this included power to deal with cases not specifically provided for by the Act and which were outside the ordinary operation of s. 10 and s. 12.

This recognition of a plenary independent power of the Board under s. 65(2) of the Act has the support of two prior decisions, that of Clyne J. on the British Columbia Act in *In re Hotel and Restaurant Employees' International Union, Local 28 et al.*, (1954) 11 W.W.R. (N.S.) 11 at 17, [1954] 1 D.L.R. 772, and that of McRuer C.J.H.C. and the Court of Appeal in *Regina v. Ontario Labour Relations Board, Ex parte Genaire Ltd.*, [1958] O.R. 637, affd. (1959) 18 D.L.R. (2d) 588, *sub nom. International Association of Machinists v. Genaire Ltd. and Ontario Labour Relations Board,* where the corresponding section of the Ontario *Labour Relations Act* was considered. It is, in my opinion, a very necessary power to enable the Board to do its work efficiently and the present case affords an illustration of the need for it. Employees in a certain industry, organized in nine locals, decide to combine in one local of a new union, which performs the same function as the fragmented union and presents a continuity of interest, property, management, representation and personnel.

I may paraphrase Judson J.'s remarks by pointing out that here the orders of February 13 were properly made. Every interested party had notice of the applications and was given an opportunity to be heard. Cogent evidence was led that the employees in question had at all times been the employees of the respondent. The Board had knowledge that the original application named the respondent as the employer and that the substitution of Clancy's as the employer in the subsequent proceedings came as the result of the solicitors' letter of October 1. It had also evidence of the move to put Clancy's into voluntary liquidation at the very time officers of Clancy's who were also president and general manager of the respondent were purporting to be bargaining collectively under the order of October 16. The Board was free to act or not act on that evidence as it saw fit and by statute its decision is final and conclusive. This Court will not and must not interfere in what has been done within the Board's jurisdiction for, as stated by Lord Sumner in *Rex v. Nat Bell Liquors Ltd.*[1], in so doing:

[1] [1922] 2 A.C. 128 at 156.

. . . it would itself, in turn, transgress the limits within which its own jurisdiction of supervision, not of review, is confined. That supervision goes to two points: one is the area of the inferior jurisdiction and the qualifications and conditions of its exercise; the other is the observance of the law in the course of its exercise.

Bull J.A. in the Court of Appeal recognized the wide effect of s. 65(3) when he said:

It is clear that Section 65(3) confers the power to vary or cancel a former order or decision in appropriate circumstances, that this power is intended to cover situations which are not specifically dealt with in the Statute, and that the Board is not restricted merely to the facts as they existed when the original order or decision was made: *In re Hotel and Restaurant Employees' International Union, Local 28 et al* (1954) 11 W.W.R. (N.S.) 11; *Regina v. Ontario Lab. Rel. Bd.; Ex parte Genaire Ltd.* [1958] O.R. 637, approved on appeal (1959) 18 D.L.R. (2d) 588.

Similarly, it is well established law that when there is a privative clause such as Section 65(1) the Court in *certiorari* proceedings is restricted to determining whether or not the tribunal, in this case the Board of Labour Relations, acted within its jurisdiction, including matters such as denial of natural justice, bias, fraud, etc., or whether there is error on the face of the record. In the disposition of issues within its jurisdiction, the Board's decision, including certification of a trade-union, is not open to judicial review, unless the Court determines that the Board's error goes to jurisdiction as opposed to an error within its jurisdiction. The decision of the Board as to who are employees and who are employers is a finding solely within the jurisdiction of the Board and is "final and conclusive" and not open to judicial review: *Labour Relations Board et al. v. Traders' Service Ltd.* [1958] S.C.R. 672.

However, he limited the effect of s. 65(3) by holding that the word "vary" in the section "cannot be used as an excuse for bringing retroactively into being a new unit of employees for which the Union stands certified...". I cannot read the section as narrowing the plain meaning of the word "vary". It is defined in the Shorter Oxford Dictionary as: "to cause to change or alter; to adapt to certain circumstances or requirements by appropriate modifications" nor do I accept the view that the word "vary" cannot apply retroactively. It has not such a limited meaning and circumstances will frequently arise where it must have a retroactive effect. The present case is a classical example.

The Board had jurisdiction to entertain the application to vary. Nothing in the record or in the affidavits shows

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that it lost jurisdiction for any of the reasons which the law recognizes as ousting jurisdiction, *i.e.*, bias, interest, fraud, denial of natural justice or want of qualification.

The appeal should accordingly be allowed with costs here and in the Courts below and the application to quash the orders in question should be dismissed.

Appeal allowed with costs.

Solicitor for the appellants: Alex B. Macdonald, Vancouver.

Solicitor for the respondent: S. H. Mahon, Vancouver.