LABOUR RELATIONS BOARD OF THE PROVINCE OF BRITISH COLUMBIA AND BRITISH COLUMBIA INTERIOR FRUIT AND VEGETABLE WORKERS UNION, LOCAL 1572 .....APPELLANTS;

1962
*Oct. 9
Nov. 14

AND

OLIVER CO-OPERATIVE GROWERS EXCHANGE ..... } RESPONDENT.

ON APPEAL FROM THE COURT OF APPEAL FOR BRITISH COLUMBIA

Trade unions—Locals of union reorganized to form one local of new union—Variation of certificate of bargaining authority—Jurisdiction of Labour Relations Board—Labour Relations Act, 1954 (B.C.), c. 17, now R.S.B.C. 1960, c. 205, ss. 10, 12, 63, 65(2).

A number of union locals representing fruit and vegetable packing employees and certified under the *Industrial Conciliation and Arbitration Act*, R.S.B.C. 1948, c. 155, entered into collective agreements with an

*PRESENT: Kerwin C.J. and Cartwright, Martland, Judson and Ritchie JJ.

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organization representing the employers. Later, the union unanimously resolved to merge with and become part of the appellant union, and the individual locals subsequently passed similar resolutions approving such merger and change of name. The appellant union applied to the Labour Relations Board for a change of the name on the certificate of bargaining authority from locals of the old union to that of the new union. Obviously, what was being done was both merger and a change of name. The judge of first instance held that the Board had power to do this under the *Labour Relations Act,* 1954 (B.C.), c. 17, now R.S.B.C. 1960, c. 205, but this decision was reversed by a majority of the Court of Appeal. The Board and the new union then appealed to this Court.

Held: The appeal should be allowed.

Per Kerwin C.J. and Martland and Judson JJ.: The Board had jurisdiction to vary the certificate as it did under s. 65(2) of the Act. It was unnecessary to proceed under ss. 10 and 12 dealing with certification and decertification; the certification procedures of ss. 10 and 12 were appropriate when a union seeks initial certification or contending unions seek certification but not in the case of a successor union resulting from a merger or reorganization. Section 65(2) conferred upon the Board an entirely independent power to vary or revoke a former order in appropriate circumstances and 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. *In re Hotel and Restaurant Employees' International Union, Local 28 et al.* (1954), 11 W.W.R. (N.S.) 11; *R. v. Ontario Labour Relations Board, Ex parte Genaire Ltd.*, [1958] O.R. 637, affd. *sub nom. International Association of Machinists v. Genaire Ltd. and Ontario Labour Relations Board* (1959), 18 D.L.R. (2d) 588, referred to.

The proper record of the case consisted only of the petition of the appellant union and the decision of the Board; on the face of the record there was no error in either fact or law.

The suggestion that reg. 9(*a*), made under authority of s. 63, was an attempt by the Board to extend its jurisdiction beyond the Act was rejected.

Per Cartwright and Ritchie JJ.: The Act made specific provision by s. 12(10)(*a*) for cancellation of certification at any time when the Board was satisfied that the certified union "has ceased to be a trade union". The respondent failed to show that the provisions of this section had not been complied with, and as the Board had ample ground for being satisfied that the old unions had ceased to exist, it was to be taken that it was so satisfied and that the requirements of the section were, therefore, fulfilled.

Under the circumstances of the case, the Board was acting within the scope of the authority conferred by s. 65(2) when it granted the order in question, and so varied the original order of certification as to recognize the new local as the bargaining representative of the unit. The provisions of s. 65(2) did not clothe the Board with authority to ignore specific provisions of the Act and to so vary its orders as to achieve by a "short cut" a result which under the Act could only be achieved by taking certain specified steps. However, when it was apparent that the Board's existing order no longer reflected the true situation and when the Board was satisfied that the order should be varied in order to give effect to the true purposes of the certification

and was satisfied also that there were no provisions of the Act which specifically covered the situation, then the Board was justified in exercising the authority conferred on it by s. 65(2).

APPEAL from a judgment of the Court of Appeal for British Columbia[1], which, on an appeal from a judgment of Brown J. dismissing a motion for *certiorari,* quashed a decision of the Labour Relations Board. Appeal allowed.

A. B. Macdonald, for the appellant Union.

A. W. Mercer, for the appellant Board.

J. G. Alley, for the respondent.

The judgment of Kerwin C.J. and of Martland and Judson JJ. was delivered by

JUDSON J.:—This is an appeal from the judgment of the Court of Appeal for British Columbia[1], which, on an appeal from Brown J., quashed a decision of the Labour Relations Board. The appeal is by the Labour Relations Board of the province and a union, which I shall refer to as Local 1572.

Before Local 1572 came into being the employees in the industry were represented by nine locals of the Fruit and Vegetable Workers' Union. These locals, which had been certified in 1952 under the *Industrial Conciliation and Arbitration Act,* R.S.B.C. 1948, c. 155, included employees of 23 named employers operating 30 plants in the fruit and vegetable packing industry in the Okanagan Valley. The locals and the Okanagan Federated Shippers Association representing the employers had entered into collective agreements.

Later, there was a jurisdictional dispute between the Fruit and Vegetable Workers' Union and the Teamsters' Union. This dispute came to an end in 1958, at the prompting of the Canadian Labour Congress which was to establish a new local to succeed to the rights and liabilities of the nine locals of the old union. On November 22, 1958, the Fruit and Vegetable Workers' Union, with due notice to its members, held a meeting and amended its constitution to permit merger or affiliation with the proposed new union, Local 1572. Local 1572 was actually chartered by the Canadian Labour Congress on November 28, 1958. The new local accepted as members the vast majority of the employees with the approval of the Fruit and Vegetable Workers'

[1] (1962), 37 W.W.R. 353, 32 D.L.R. (2d) 440

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Union. On January 16 and 17, 1959, at a convention of the old union, it unanimously resolved to merge with and become part of the new union and to change its name accordingly. After January 17, 1959, the individual locals of the Fruit and Vegetable Workers' Union passed similar resolutions approving such merger and change of name.

On March 24, 1959, the appellant union applied to the Board for a change of the name appearing on the Certificate of Bargaining Authority, dated July 24, 1952, from locals of the old union to that of the new union. This application, made on the Board's usual form, states that the reason for the application is "merger and change of name". Regulation 9(*a*), made under the authority of s. 63 of the *Labour Relations Act,* 1954 (B.C.), c. 17, now R.S.B.C. 1960, c. 205, provides a procedure on applications to the Board under s. 65(2) of the Act where a trade union desires a change of name on a certificate due to merger or other circumstances. I emphasize at this point that no interested person could have understood that what was being done was a mere change of name. It was obviously both merger and a change of name.

The Board's order is dated May 25, 1959, and reads as follows:

VARIATION OF CERTIFICATE

WHEREAS by Certificate issued the 24th day of July, 1952, the Fruit and Vegetable Workers Unions, Locals Nos. 1, 2, 3, 4, 5, 6, 8, 9, and 11, were certified for a unit employed by twenty-three employers in thirty packing-houses in the Okanagan Valley;

AND WHEREAS it has been shown to this Board that each of the said unions has changed its name to B.C. Interior Fruit and Vegetable Workers Union, Local No. 1572;

AND WHEREAS the Labour Relations Board is satisfied that the employees in the unit to which this Certificate relates desire the requested change in name of the certified trade unions;

NOW THEREFORE, pursuant to Section 65(2) of the Labour Relations Act, the said Certificate of the 24th day of July, 1952, is varied by deleting therefrom the names Fruit and Vegetable Workers Unions, Locals No. 1, 2, 3, 4, 5, 6, 8, 9, and 11, and by inserting in their place and stead the name B.C. Interior Fruit and Vegetable Workers Union, Local No. 1572.

The order of the Board makes no express reference to merger but it does recite that it exercised its powers under s. 65(2) of the *Labour Relations Act.* By implication there

is a reference to merger because the names of Locals 1, 2, 3, 4, 5, 6, 8, 9 and 11 are deleted and the name of Local 1572 is substituted.

The issue is whether the Board had power to do this under s. 65(2) of the Act, which reads:

> 65. (2) The Board may, upon the petition of any employer, employers' organization, trade-union, or person, or of its own motion, reconsider any decision or order made by it under this Act, and may vary or revoke any such decision or order.

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 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 oBard an entirely independent

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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.*[1], and that of McRuer C.J.H.C. and the Court of Appeal in *Regina v. Ontario Labour Relations Board, Ex parte Genaire Ltd.*[2], 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.

When met with an application by a successor union, what useful purpose could the Board serve by compelling decertification proceedings for the nine old locals and an application for certification of the new local 1572 when all this could be done on notice to the interested parties under s. 65(2)? The essential problem before the Board was one of representation of a group of employees and concepts concerning change of entity, derived from the law of companies, afford no assistance to its solution. Obviously Local 1572 was a new and different association of employees but it was a successor union.

The proper record of this case consists only of the petition of Local 1572 and the decision of the Board. Anything else is extraneous and inadmissible. There is no error in either fact or law on the face of the record. Much of the material in the appeal book was intended to show that certain employees of the respondent Oliver Co-Operative Growers Exchange did not like what had been done. There was no admissible evidence to show this but, even if there were, it does not supply a foundation for an application to quash

[1] (1954), 11 W.W.R. (N.S.) 11 at 17, [1954] 1 D.L.R. 772.

[2] [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.*

by way of *certiorari*. This was a matter entirely for the Board's consideration within the exercise of its powers under s. 65(2).

It was also suggested that regulation 9(*a*) was an attempt by the Board to extend its jurisdiction beyond the Act. I do not so regard it. Section 65(2) gives the Board power to vary or revoke any decision or order. All that regulation 9(*a*) is saying is that the Board will consider the exercise of this power where "due to merger or other circumstances" a certified trade union changes its name from that which appears on the certificate. This is not an attempt to legislate by way of regulation in a manner not authorized by the Act.

I would set aside the judgment of the Court of Appeal, dismiss the application to quash the certificate or decision of the Board and restore the judgment on the hearing. The respondent in this Court, Oliver Co-Operative Growers Exchange, should pay to Local 1572 its costs in the Court of Appeal and in this Court, and to the Labour Relations Board its costs in this Court.

The judgment of Cartwright and Ritchie JJ. was delivered by

RITCHIE J.:—The circumstances giving rise to this appeal are stated by my brother Judson whose reasons for judgment I have had the benefit of reading and with whose disposition of this appeal I am in full agreement. I reach the same result by a slightly different process of reasoning and will accordingly state my reasons briefly.

Paragraph 5 of the petition, pursuant to which the order of May 25, 1959, was granted, reads as follows:

> 5. Has the change of name of the trade union been approved by the membership affected?
>
> Yes.
>
> In what manner?
>
> Through merger, and change of name by resolution, adopted at a meeting of Local Unions No. 1, 2, 3, 4, 5, 6, 8, 9, 11, and later at a convention of the F.F.V.W.U. Further, Locals No. 1, 2, 3, 4, 5, 6, 8, 9, 11, and their members were merged with Local No. 1572 by resolution adopted at a meeting of Local No. 1572 held on March 15, 16, 17, 1959.

It is apparent that in the view of all the unions and their members a merger had been completely effected by March 17, 1959, with the result that the old unions had ceased to exist and all their rights, jurisdiction, assets and

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liabilities had become vested in the new union, but the status of all these unions as bargaining representatives for their members is circumscribed by the provisions of the *Labour Relations Act,* and until the Labour Relations Board cancelled the certificate of Locals Nos. 1, 2, 3, 4, 5, 6, 8, 9 and 11 in the manner provided by that Act they remained, for all purposes of the Act, the bargaining representative of the employees in the unit concerned. The new union (Local 1572), on the other hand, could not achieve that status until the Board granted certification in its name.

The *Labour Relations Act* makes specific provision by s. 12(10)(*a*) for cancellation of certification at any time when the Labour Relations Board is satisfied that the certified union "has ceased to be a trade union". The respondent, who challenged the Board's jurisdiction, has failed to show that the provisions of this section were not complied with, and as I am of opinion that the Board had ample ground for being satisfied that the old unions had ceased to exist, I think it is to be taken that it was so satisfied and that the requirements of the section were, therefore, fulfilled. I do not think that the omission to refer to s. 12(10)(*a*) in the order of May 25, 1959, in any way detracts from the validity of the cancellation of certification of the old unions which that order effected.

The certification of Local 1572, which, in my view, was also effected by the last-mentioned order, stands on an entirely different footing because at the time when that order was granted the *Labour Relations Act* contained no provision specifically dealing with the certification of a new trade union with which a certified bargaining representative had merged and the validity of the order in this regard must, therefore, depend upon the scope of the authority accorded to the Board by s. 65(2) pursuant to which it was granted.

I do not think that the provisions of s. 65(2) which are reproduced in the reasons of Judson J. clothe the Board with authority to ignore specific provisions of the Act and to so vary its orders as to achieve by a "short cut" a result which under the Act can only be achieved by taking certain specified steps. However, when it is apparent that the Board's existing order no longer reflects the true situation and when the Board is satisfied that that order should be varied in order to give effect to the true purposes of the certification and is satisfied also that there are no provisions

of the Act which specifically cover the situation, then, in my opinion, the Board is justified in exercising the authority conferred on it by s. 65(2). It seems to me that the Board was faced with such a situation in the present case, and that it is to be taken as having been satisfied that the certified unions had ceased to exist and that the majority of the employees of each of the employers concerned were members of the new union. Under these circumstances, I am of opinion that the Board was acting within the scope of the authority conferred by s. 65(2) when it granted the order of May 25, 1959, and so varied the original order of certification as to recognize Local 1572 as the bargaining representative of the unit.

In all other respects, I am in agreement with the reasons of Mr. Justice Judson.

Appeal allowed with costs.

Solicitors for the appellant Board: Paine, Edmonds, Mercer & Williams, Vancouver.

Solicitor for the appellant Union: A. B. Macdonald, Vancouver.

Solicitors for the respondent: Davis, Hossie, Campbell, Brazier & McLorg, Vancouver.