Case Name:

Trevor J. Lowe Holdings Ltd. (Re)

Between
Trevor J. Lowe Holdings Ltd. (Canadian Tire Associate Store) (the "employer"), and
United Food and Commercial Workers International Union, Local 1518 (the "union")

[2006] B.C.L.R.B.D. No. 60

122 C.L.R.B.R. (2d) 155

BCLRB Decision No. B50/2006

(Leave for Reconsideration of BCLRB No. B212/2005)

Case No. 53780

British Columbia Labour Relations Board

B. Mullin (Chair), M. Fleming (Associate Chair) and G.J. Mullaly (Vice-Chair)

Decision: February 24, 2006.

(17 paras.)

Counsel:

Israel Chafetz, for the Employer

Patrick Dickie, for the Union

DECISION OF THE BOARD

1 The Employer applies under Section 141 of the Labour Relations Code (the "Code") for leave and reconsideration of the decision of the Labour Relations Board (the "Board") in BCLRB No. B212/2005 (the "Original Decision"). The Employer raises four grounds for leave and reconsideration. We requested a response from the Union only on the last two of the grounds dealt with below. Having received that response and the Employer's reply, we are now able to render our decision in this matter.

2 We will deal with each of the four grounds for leave and reconsideration in turn.

REMEDIAL CERTIFICATION

3 The Employer submits that the imposition of a remedial certification in this matter is inconsistent with Code principles, the product of palpable and overriding evidentiary errors, and is a remedy not rationally related to the breach.

4 We have reviewed the Original Decision and the Employer's submissions in its application for leave and reconsideration on this point, and we find that the submissions do not raise a serious question as to the correctness of the decision to impose a remedial certification.

5 In particular, we are not persuaded by the argument that the Union should have filed an unfair labour practice complaint prior to the March 4, 2005 vote if it wished to rely on the Employer's unfair labour practices prior to that vote as a basis for arguing that it did not reflect the true wishes of the employees. Nor are we persuaded by the argument that the Union's subsequent decision to file a second application for certification is inconsistent with its position that a remedial certification is appropriate in the circumstances. Neither of these circumstances overcomes or negates the findings of fact made by the original panel which easily justify the decision to impose a remedial certification in the circumstances of this case.

6 The following findings of fact, and mixed fact and law, justify the decision to impose a remedial certification in this case: the Employer committed a serious unfair labour practice in coercing union organizers by way of a threat to their employment security (para. 151); the effect of the contravention was to cast a continuing chill on the organizers' efforts which lasted up to the date of the vote (para. 152); a majority of employees had signed cards and therefore the Union had a core group of support sufficient for collective bargaining (para. 153); the result of the first vote was 17-17 (para. 153); and, "but for that contravention, the Union would have obtained majority support at the first vote" (para. 154). In circumstances where the Board finds a union would have obtained majority support for certification but for the unfair labour practice committed by the employer, remedial certification is clearly an appropriate remedy.

7 We are not persuaded that the original panel made factual errors in reaching the conclusion that, but for the Employer's contravention, the Union would have obtained majority support in the first vote. In these circumstances, remedial certification was neither inconsistent with Code principles nor unrelated to the breach. Accordingly, this ground for reconsideration is dismissed.

THE WAGE INCREASE UNFAIR LABOUR PRACTICE

8 The Employer submits that the original panel's conclusion that the Employer was aware of the second certification campaign when it gave the wage increase was based on a palpable and overriding error of fact. It submits that the original panel's conclusion "cannot be supported on a review of the whole of the evidence".

9 The Employer does not assert that there was no evidentiary basis for the original panel's conclusion. A review of the Original Decision reveals there was evidence before the original panel by which the credibility of the Employer's claim of unawareness on this point could legitimately be rejected. Accordingly, we find no basis for alleging palpable and overriding error of fact, and therefore no basis for overturning the original panel's determination on this point. This ground for review is also dismissed.

THE PROFIT SHARING UNFAIR LABOUR PRACTICE

10 The Employer submits that the original panel's finding that the implementation of the profit sharing program constituted a breach of the freeze provision was inconsistent with the facts and with the "business as before" test under Section 32 of the Code.

11 We find the Union's submissions on this point in its response submissions to be a complete answer to this ground for reconsideration, and not rebutted by the Employer in its final reply on this point.

12 Even accepting the Employer's submission that the "implementation" of the profit sharing plan began with its registration, the communication of this alteration of the terms and conditions of employment to the employees did not occur until a time when the Union's application for certification was pending. In these circumstances, we find a breach of Section 32 is made out.

13 In any case, as noted by the Union, the original panel made specific findings, not challenged by the Employer, that the Employer announced the implementation of the profit sharing plan at this time because it "sought to induce employees to vote against union representation" and "to induce employees to refrain from becoming or continuing to be members of the Union" (para. 135). Accordingly, even if the original panel's conclusion that the Employer's conduct breached Section 32 might be debated, there is no question that it correctly found the conduct breached Section 6 of the Code. Accordingly, we find no basis for reconsideration of the original panel's conclusion that the Employer's conduct constituted a contravention of the Code.

THE MEETINGS

14 In its leave and reconsideration application, the Employer said twenty meetings were ordered under the remedies in the Original Decision. That is not accurate; only 10 meetings were ordered: BCLRB No. B254/2005.

15 More substantively, we do find a nexus between the ordering of the meetings and the unfair labour practices committed against the Union's organizers. We also find a sufficient proportionality in the nature and number of the meetings in relation to the unfair labour practices which were committed, such that we would not interfere with these remedies as a reconsideration panel.

16 Lastly, ordering that the meetings be held over a ten-month period obviously took into account the provision in the Code which allows a decertification application to be brought ten months after a certification.

I. CONCLUSION

17 In light of the above reasons, the application for reconsideration is dismissed.

B. MULLIN, CHAIR
M. FLEMING, ASSOCIATE CHAIR
G.J. MULLALY, VICE-CHAIR

cp/e/qlebh