



**ALRB cite:** *International Brotherhood of Electrical Workers, Local 424 v. Canem Systems Ltd. et al.*  
[1987] Alta. L.R.B.R. 170

---

**INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, LOCAL 424, Applicant and CANEM SYSTEMS LTD., MENAC ELECTRICAL - MECHANICAL SYSTEMS LTD., FINCH LABOUR CONTRACTORS LIMITED, WORKFORCE CONSTRUCTION LTD., 325270 ALBERTA LTD. CARRYING ON BUSINESS AS QUADRA CONSTRUCTION, Respondents. Board Flies L.R. 2045-F-18, L.R. 2045-M-25, L.R. 2045-C-27, L.R. 2045-0-1. February 13, 1987.**

*A.K. Aldridge, Vice-Chairman, F. Kuzemski, K. Thompson and D. Mitchell, Members*

For the Applicant: W. Johnson

For Canem, Menac and Finch: D. Ross, Q.C.

For Workforce and Quadra: B. Thompson

**Common Employer Declaration - s. 133 - Prehearing production of documents - s. 13(1)(b).**

**Notice to Produce — s. 13(1)(b) — Limited discovery permitted.**

**Notices to Produce — s. 13(1)(b) — Relevance of documentation required to be shown.**

*Following submission of a s. 133 application, the applicant Union sought production of documents pursuant to s. 13(1)(b) prior to the scheduled hearing. The Employers objected to the drafted Notice to Produce documents on several grounds, notably that the items requested were not adequately particularized, that the Board's powers under s. 13 did not authorize "fishing expeditions" and that Notices to Attend to management personnel were alternately available to require the production of evidence at the hearing itself. The Board held that the lack of a formal discovery process justifies permitting a measure of discovery under s. 13(1)(b). A stringent interpretation of the section would unduly limit applicants because of the fact that certain information relevant to a s. 133 inquiry lies particularly within the knowledge of the Employer. Arbitrary time restrictions on the Notices were rejected, the test being instead the relevance of the documentation. However, the volume of requested documentation should not be oppressive and must be relevant to the particulars of the application. The Board noted the impracticality of delaying the process if it refused to issue Notices for documents that would subsequently be required to be produced at the hearing itself. The Board proceeded to apply these*

*principles to the matters before it, amending some Notices and declining to issue others.*

### **REASONS FOR DECISION**

**A.K. Aldridge, Vice Chairman:** The International Brotherhood of Electrical Workers, Local Union 424 has made an application pursuant to section 133 of the Labour Relations Act, 1980, as amended in respect of certain named companies, Canem Systems Ltd. Menac Electrical-Mechanical Systems Ltd., Finch Labour Contractors Limited, Workforce Construction Ltd. and 325270 Alberta Ltd., carrying on business as Quadra Construction.

The Applicant in his December 17, 1986 application under this section has made a prima facie connection as between certain of the companies listed above. On February 10, 1987, a pre-hearing was held by a panel of the Board on what Notices to Produce Documents in respect of this application should be issued by the Board in advance of its hearing of the application. At the pre-hearing, the Applicant and the Respondent companies made submissions as to what Notices, if any, the Applicant should be entitled to have issued by the Board under s. 13(1) of the Act.

The arguments of the Respondents essentially centered on the following principal points:

1. The Board's powers under s. 13 of the Labour Relations Act were restricted to permitting Notices to Produce Documents only where there was a particularity or specificity about the document and a clearly relevant connection to the nature and particulars of the application;
2. The Board's powers to authorize such notices did not extend to notices which would or could constitute a fishing expedition that would enable the Applicant to determine if it had a case which might be supported by the document(s);
3. The powers of the Ontario Labour Relations Board permit a discovery aspect through Notices to Produce because of the broader wording of the Ontario statute than is the case in Alberta under s. 13 of the Alberta Act;
4. That the Applicant is required to do its own investigation and should not be permitted by the Board to rely upon the processes of s. 13 of the Act as a substitute for other efforts on its own behalf;
5. The Applicant has the alternative of issuing Notices to Attend to certain persons in the Respondent companies in order to permit the adduction of evidence through the hearing process and, therefore, should not be permitted to use the Board's offices under s. 13 by way of the required production of documents;

The Applicant's request for documents was also improper in that the time frame for the issuance of such documents should be limited to documents as of the date of the application and should not encompass an earlier or later time frame.

The Applicant contended that the information provided in his application with respect to the Respondent companies established the relevance of the documentary information requested through the Notices and stated that the effect of the positions taken by opposing Counsel on these Notices would essentially nullify the application of s. 13(1) of the Act. He also stated that the requested Notices were not for the purpose of harassment and were in support of verifying connections between the Respondent companies as set out in the application rather than constituting a “fishing expedition”. As to the argument about particularity, he stated that the Applicant had provided reasonable specificity in its requests, given the limitations on its knowledge of the matters on which it sought information and limitations on its ability to obtain such knowledge in advance of a hearing on the matter.

In addition to the case references filed with the Board by Counsel at the pre-hearing on this matter, the Board has considered the production of documents ordered in *Gainers v. United Food and Commercial Workers, Local 280-P* [1986] Alta.L.R.B.R. at 252, and the comments of Mr. Justice J.H. Hope in respect to the Notices in that case relating to pension documentation [1986] Alta.L.R.B.R. at 740 to 743, and more specifically, the reasons set out in the Court of Appeal decision [1986] Alta.L.R.B.R. 743 (Per Curiam), having to do with the propriety of Notices issued by the Board upon application to it and the Board’s powers under s. 13 relative to the nature of applications which come before it and which may require the production of documents.

In the Court of Appeal decision in *Gainers, supra*, the Court determined that the Labour Relations Board was created by the legislature to deal quickly and conclusively with disputes before it and had broad powers to gather and hear evidence. In this respect, the Court of Appeal noted that the terms of the orders issued in that case were not unreasonable.

Given the comments of the Courts on the *Gainers* matter involving pension documentation, it is useful to look at the Notices to Produce issued under that application as set out in *Gainers v. U.F.C.W., Local 280-P* [1986] Alta. L.R.B.R. 240 at 252. An examination of those orders indicates a specificity in many of them but there is also a class of documents ordered as in Item 5 therein, “Copies of any and all amendments to any of the aforementioned Pension Plans”. In *The Becker Milk* case [1974] O.L.R.B. 6105-74 U and 6106-74 U (Adams, Vice-Chairman) the Ontario Board recognized that the Courts may narrow what they will permit to be produced through subpoena on the basis that a discovery process is available within the civil litigation process. By inference, however, that avenue of information is not available to an Applicant under s. 133 and this Board takes the view that proceedings under s. 133 are facilitated by permitting a measure of discovery through documents made available under Notices to Produce.

It is the Board’s view that a stringent application of s. 13(1) of the Act as to particularity would or could unduly limit an Applicant under s. 133 to have an application heard on its merits because of the fact that certain information would ‘or could lie particularly within the knowledge of the Respondent companies and the Applicant could easily be in the position of shooting fish in a barrel with the random hope that it

was successful in identifying the right targets. In these circumstances, the Board would be handicapped in performing its statutory responsibility to inquire into and make determinations with respect to s. 133 of the Act.

The Board does not accept the restrictions urged upon us by Counsel of the Respondent companies as to the time restrictions to be placed upon any such Notices. It is clear, on the face of it, that evidence as to the interconnection, if any, of these companies on the Eaton Centre project in Edmonton may be available only over a period of time - perhaps, many months - but that such evidence could obviously be material to a finding under s. 133 of the Act.

In arriving at the conclusion, the Board is conscious of the strictures that the volume of documentation requested should not be oppressive and clearly should have some apparent relevance to the subject of the application as revealed by the particulars therein. The Board is also aware that confidentiality of matters outside of the subject of its inquiry should be maintained in any such Notices to Produce.

Finally, the Board is conscious of the need to structure its whole process in such a way that delays can be minimized. In terms of expediting the hearing of a s. 133 application, it is the Board's view that adjournment of a hearing under this section in order to require the production of a document which would have been produced prior to the hearing could introduce an unnecessary and undesirable delay into the situation and thereby create a disadvantage with respect to a s. 133 applicant.

Based on the foregoing considerations, the Board hereby:

1. Authorizes the Notice to Attend and Produce with respect to Quadra Construction as set out in the attachment hereto. This Notice has been limited as to item 1. to confine it to certain named employees. The Notice has been further limited in item 2. to confine it to intercompany invoices and reconciling documents as between Quadra and Menac;
2. Authorizes the Notice to Produce with respect to Menac Electrical-Mechanical Systems Ltd. as set out in the attachment hereto. This Notice has been limited in the case of items 1., 2. and 3. therein to the electrical portion of the Eaton's Centre Project in Edmonton, Alberta. Item 4. has been limited to electrical shop drawings prepared by Menac for the project. Item 5. as added by the Board, provides for production of an electrical drawing which shows on whose behalf the drawing was prepared.
3. Authorizes a Notice to Produce with respect to the Corporation of the City of Edmonton in the form set out as attached.

The reference to Quadra Construction was changed from the original application based upon information supplied to the Union's solicitor from Counsel for Quadra.

The Board declined to issue a Notice to Produce with respect to the City of Edmonton, the production of invoices and receipts for charges for various telephone numbers because of questionable relevance to the application before the Board — this information might be available to the Applicant by direct contract with the City of Edmonton. On the question of relevance, the Board declined to issue a Notice to Produce with respect to Imperial Parking Ltd.