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987 v. York Farms, Division of Canada Packers Inc. et al.
[1987] Alta.L.R.B.R. 541

MISCELLANEOUS EMPLOYEES TEAMSTERS LOCAL UNION 987, Applicant and YORK FARMS, DIVISION OF CANADA PACKERS INC., Respondent and TRANS CANADA FREEZERS LTD., Respondent and JOHN ORATION, Petitioner and UNITED FOOD AND COMMERCIAL WORKERS INTERNATIONAL UNION, LOCAL 740-P, Intervenor. Board Files: L.R. 70-T-4, L.R. 86-A-2. October 9, 1987.

A.K. Aldridge, Vice Chairman, A. MacDonald, J. Rodden, Members

For Teamsters Local 987: J. Landry (Counsel), R. Milhausen

For York Farms: P.G. Ponting, Q.C. (Counsel), R. Barauskas

For U.F.C.W., Local 740-P: N. Leclaire (Spokesman), K. Connolly

For Petitioner: John Gratton

Successor Rights — s. 132(2) — Transfer of business — Intermingling of employees.

Remedies — s. 132(2) — Request for vote — Declined where certification opportunity available during open period.

The applicant Union represented employees of Trans Canada. Trans Canada transferred part of its business to York, which was party to a collective agreement with the Intervenor Union. Approximately one half of Trans Canada's bargaining unit employees obtained employment with York, thereafter comprising one third of its expanded employee workforce. The collective agreement between York and the Intervenor Union was open for bargaining. The applicant Union sought a vote as to which bargaining agent should represent the York employees after the transfer.

Although it was acknowledged that there clearly had been a transfer of part of the business within the meaning of s. 132(1), the Board dismissed the application under s. 132(2)(a), noting that the applicant

had the opportunity to solicit employee support and apply for certification during the open period of the collective agreement. Accordingly, the Board declared the Intervenor Union to be the bargaining agent of all York plant employees, including those formerly employed by Trans Canada.

REASONS FOR DECISION

A.K. Aldridge: The matters before the Board were brought by Miscellaneous Employees Teamsters Local Union 987 of Alberta (referred to as “Local 987”) relative to expanded operations of York Farms, a Division of Canada Packers Inc. (referred to as “York”) in Lethbridge, Alberta and relative to the collective bargaining relationship between York and United Food and Commercial Workers International Union, Local 740-P (referred to as the “U.F.C.W.”). York’s expansion in Lethbridge occurred through its purchase of packaging equipment from Trans Canada Freezers Limited (referred to as Trans Canada).

More specifically, the Union’s interest in this matter was set out in a letter to the Board dated July 7, 1987, which reads in part:

This letter is to be considered to represent the hourly rated employees of Trans Canada Freezers. Enclosed is a copy of Certificate 68-84.

A collective agreement has been entered into with a term lasting to February 22nd, 1988. A copy is enclosed. There are approximately 34 people in the unit.

By letter dated on or about June 17, 1987, Trans Canada Freezers notified approximately 17 of 34 people in the unit that its packaging equipment was sold to York Farms and that they would be offered employment with York Farms. A copy of such a letter is enclosed.

Local 987 therefore alleges that part of the business has been sold and requests:

- a) that the present certification and collective agreement remain valid and intact as they relate to Trans Canada Freezers Limited except that the name of the certificate be amended to properly reflect the name of the employer;
- b) that the existing certificate also apply to York Farms insofar as it is applicable;
- c) that the existing collective agreement apply to York Farms insofar as it is applicable;

- d) that the Labour Board conduct such investigation and/or take such votes and/or make such declarations as may be appropriate;
- e) that this be considered an application under section 132 and/or the appropriate parts of section 8;

Further particulars of the Union's request were provided by a letter dated August 12, 1987 to the Board which, again in part, reads as follows:

... We ask the Board for the following:

1. A full and complete investigation under Section 132.
2. A vote by the entire bargaining unit as to which union they want to represent them.

We believe that there has been a Section 132 transaction because of the following:

1. Space of Trans Canada Freezers was taken over by York Farms.
2. York Farms took twenty-one employees from Trans Canada Freezers.
3. York Farms took the packaging equipment of Trans Canada Freezers.
4. York Farms is now doing the packaging business once done by Trans Canada Freezers.

Trans Canada sold its vegetable packaging equipment to York and leased space to it for that operation and certain other requirements. The various operations of the two companies at the Lethbridge site consist successively of cleaning, preparing, packaging, freezing and storage of certain vegetables. In the matters before the Board, there has been no material change in the totality of these operations since the transfer of the packaging operations to York with the exception that some twenty-three employees were terminated by Trans Canada and hired by York as part of its purchase of the packaging equipment and takeover of that processing phase from Trans Canada.

After the employees had been terminated by Trans Canada, a delay occurred in executing the documents to effect the sale and purchase transaction between it and York. During that interim period, York

reimbursed Trans Canada for the wages of those employees. York has given the employees full credit for their seniority with Trans Canada and no wage complaints were in evidence before the Board in respect of these employees.

Local 987 and the U.F.C.W. through their predecessors have collective bargaining certificates and relationships dating back 20 years or more with Trans Canada and York, respectively. There is an all-employee bargaining unit in each case. Prior to the termination of employees related to packaging operations, Trans Canada apparently employed thirty-four persons in the all-employee bargaining unit represented by Local 987. The employee total at York after the transfer of the packaging operation to it was approximately sixty employees of whom approximately one third, or thirty-three percent, were former Trans Canada employees, as acknowledged by the parties.

BOARD DETERMINATIONS

Counsel for York acknowledged that there had been a transfer of part of the business of Trans Canada to York in the sale of packaging equipment to York and the Board, in giving a liberal interpretation to subsection 132(1) of the *Labour Relations Act* set out below, as applied to the facts of this case, acknowledges that there was a disposition of part of the business of Trans Canada Freezers in Lethbridge to York.

132(1) When a business, undertaking or part of it is sold, leased, transferred, merged with another business, undertaking or part of it or otherwise disposed of so that the control, management or supervision of it passes to the purchaser, lessee, transferee or person acquiring it is, where there have been proceedings under this Act, bound by those proceedings and the proceedings shall continue as if no change had occurred, and

- (a) if a trade union is certified, the certification remains in effect and applies to the purchaser, lessee, transferee or person acquiring the business, undertaking or part of it, and*
- (b) if a collective agreement is in force the collective agreement continues to bind the purchaser, lessee, transferee or person acquiring the business, undertaking or part of it as if the collective agreement had been signed by him.*

Counsel for Local 987 requested the Board to conduct a vote of all hourly employees of York to ascertain their wishes as to which union, Local 987 or the U.F.C.W., would represent them in their collective

bargaining relationships with York. This argument was based upon the successful, long-standing representation of a substantial number of employees who are now employed by York as a consequence of the transfer of packaging operations from York to Trans Canada. Local 987 attached particular significance to the large proportionate number of persons added to the bargaining unit at York and referred to a canvass of Ontario Labour Relations Board decisions as set out in *Silverwood Dairies, Division of Silverwood Industries Ltd. and Borden Dairy, Division of the Borden Company, Limited and Retail, Wholesale and Department Store Union Local 440 and Teamsters, Local Union No. 647, Milk and Bread Drivers, Dairy Employees, et al* (October 14, 1980) O.L.R.B. 0912-80-R. That decision canvassed other Ontario Board decisions as to when a representation vote would be ordered where a group of represented employees was added to a second group of employees through a sale, lease or transfer. In Counsel's review of *Silverwood*, he ascertained a general guideline followed by the Ontario Board that where the group added to an existing unit represented twenty-five percent or more of the new employee total, the Ontario Board generally conducted an election of the kind he advocated in the case before us

Counsel submitted that the Ontario Board's approach reflected a fair consideration of pre-existing rights, while noting that few decisions had issued from the Alberta Board on such questions. He did, however, refer to the decisions of our Board in *Dominion Fruit, a Division of Westfair Foods and Western Grocers Ltd. and Teamsters Local 987 and Retail Clerks International Union* (1980) Alta. L.R.B. where representation votes were ordered in the newly merged operations of Western Grocers as between the Retail Clerks and Local 987 in respect of warehouse employees and, secondly, among the merged office employees to determine if they wanted representation by the Retail Clerks which held a certificate for such employees in *Dominion Fruit*. Unfortunately, an oral decision was issued in that case and the detailed considerations upon which those votes were ordered are not available to this panel of the Board.

The other decision of this Board cited by Counsel to support his request was *Price-Daxion Division of Inter-City Papers Ltd. v. Canadian Paperworkers Union* [1986] Alta. L.R.B. 216 where the Board ordered votes of two groups of employees in Edmonton and Calgary, respectively, who were intermingled as a consequence of the merged operations of two companies. In that case, there were nine employees represented by the Union added to eleven non-union employees at one location and a reversal of the "represented" versus "unrepresented" figures in the other city. The Board conducted a vote at each location to "obtain an expression of the wishes of the employees" as to whether they wanted the bargaining agent to represent them. The circumstances in *Price-Daxion* are distinguished from those before us in having involved an intermingling of organized and unorganized employees.

He also referred to *Kelly Douglas and Company Limited and W.H. Malkin Limited and Pacific Cartage Limited and Kelly Douglas and Subsidiary Companies Employees' Association and Retail, Wholesale*

and Department Store Union, Local 580 and General Truck Drivers and Helpers Union, Teamsters Local 31 (March 18, 1974) B.C.L.R.B. the essential thrust of which was that a representation vote in an intermingled group of employees which have been represented by two different unions would not be conducted where a major proportion of the merged employee group had been represented by one union relative to the other. Counsel noted, however, that the respective size of the add-on group in each of two units represented only 7% and 17%. His suggestion was that the B.C. Board examined the relative size of the add-on groups in reaching its decision and thus was utilizing a numerical approach parallel to that used by the Ontario Board.

In further support of its request for a vote, Counsel for Local 987 also submitted that its bargaining rights were transferred to York under s. 132(1) of the Act along with the transfer of part of Trans Canada's business, while making it clear that Local 987 did not seek a separate, fragmented unit of York employees. He observed that the Board had the power under the Act to order that vote and requested that it do so in keeping with the approach of other Boards in Canada in similar situations and in recognizing the lengthy representation of employees by Local 987.

A petition was received by the Board at hearing from a former Trans Canada employee hired by York after the transfer of packaging equipment. That petition, which he testified that he prepared at the suggestion of a Local 987 representative in readiness for the Board's hearing of this case, requested the Board to hold a representation vote of York employees to determine which Union would represent them so that they would know where to turn to have their problems resolved. That petition contained twenty-four signatures, twenty-two of which he stated were those of former Trans Canada employees hired by York.

York's Counsel opposed a representation vote as between the two unions on the ground that it was not the practice of the Canada Labour Relations Board or other Boards across the country in such cases. He noted that the U.F.C.W. collective agreement with York is in the open period and that it was up to Local 987 to organize the employees and apply for certification if it wished to represent all employees at York. He argued that Alberta relies upon membership evidence rather than votes as a general practice in representation questions, in contrast with several other Canadian jurisdictions.

The spokesman for the U.F.C.W. made it clear to the Board that, while his Union had a good relationship with Local 987, he questioned the appropriateness of a run-off vote at York as between his Union and Local 987, since there was no doubt introduced as to the majority support of the U.F.C.W. at York and his Union, too, had represented employees at that location for a very lengthy period of time.

The Board's powers in deciding the rights of bargaining agents in cases such as this, where two groups of employees are intermingled or there is accretion, are set out in s.132(2) of the Act as follows:

132(2) Where a question arises under this section, the Board, on the application of any employer, trade union or person affected, may determine what rights, privileges and duties have been acquired or retained and the Board may, for that purpose, make any inquiries and direct the taking of any votes that it considers necessary and decide any questions arising under this section, and

(a) the Board may determine and declare which trade union or trade unions shall be the bargaining agent or agents for a unit or units of employees of the purchaser, lessee, transferee or person acquiring the business, undertaking or part of it,

(b) if a trade union or trade unions are certified with respect to the business, undertaking or part of it, or with respect to the purchaser, lessee, transferee or person acquiring the business, undertaking or part of it, the Board may amend or revoke any certificate and determine and declare that 1 or more certificates or certificates as amended are in effect or remain in effect and apply or will apply to the purchaser, lessee, transferee or person acquiring the business, undertaking or part of it,

(c) if 1 or more collective agreements are in force with respect to the business, undertaking or part of it, or with respect to the purchaser, lessee, transferee or person acquiring the business, undertaking or part of it, the Board may cancel any of those agreements or amend any of those agreements with respect to the employees covered by the agreement and determine and declare that 1 or more collective agreements or collective agreements as amended are in effect or remain in effect and bind or will continue to bind the purchaser, lessee, transferee or person acquiring the business, undertaking or part of it, and

(d) if there are proceedings under the Act before the date of sale, lease, transfer or other disposition of the business, undertaking or part of it, the Board may determine and declare whether those

proceedings are

binding on or the extent to which those proceedings are binding on the purchaser, lessee, transferee or person acquiring the business, undertaking or part of it.

The essential elements of the application before us are that:

1. Trans Canada transferred part of its business to York;
2. Local 987 represented the employees terminated by Trans Canada and then hired by York as a result of that transfer;
3. The York employees are represented by the U.F.C.W. whose collective agreement is open for bargaining by notice not later than September 15, 1987;
4. The ex-Trans Canada employees hired by York comprise approximately one third of the expanded employee group at York;
5. Local 987 seeks a vote as to which bargaining agent shall represent York employees after the transfer;
6. There is little or no apparent dissatisfaction towards the U.F.C.W. on the part of those employees who were employed by York prior to the acquisition of the packaging operation.

On the combined facts in this case, the Board hereby dismisses the application of Local 987 and, more specifically, its request for a vote among York employees as to whether it or the U.F.C.W. shall be their bargaining agent. In doing so within its powers under s. 132(2)(a) of the Act, the Board has concluded that Local 987 has the opportunity to solicit employee support and to apply for certification during the open period of the collective agreement as provided in s. 34(3)(d) of the Act.

Whereas the Ontario Board might very well order a representation vote where the group added comprises one third of an expanded employee group in such a situation, we do not find that practice persuasive on the basis of numbers alone and without any other reasons, particularly where the open period was near at hand at the time of the application by Local 987. In the case before us, there was little or no evidence of dissatisfaction regarding the U.F.C.W. as bargaining agent and the Board accordingly infers that the U.F.C.W. continues to have significant majority support of employees. We did not find the employee petition for a vote, which was signed by only two employees who had been represented by the U.F.C.W. prior to the transfer of operations to York, to be a significant indicator of discontent towards that union if, indeed, it even so signifies.

The Board, furthermore, finds and confirms under s. 132(2)(a) of the Act that the U.F.C.W. is the bargaining agent of employees added to the bargaining unit of “all plant employees” of York in

Lethbridge and finds it unnecessary to amend that bargaining unit description. In having made its finding on the request of Local 987 for a vote, it is unnecessary for the Board to consider further Local 987's request that the Board make certain determinations under s. 8 of the Act. While the question was not before us, the Board also does not find it necessary to amend the all-employee bargaining unit description in respect of the operations remaining at Trans Canada after the transfer of the packaging portion of its business to York.

In the course of the hearing and through the Officer's report, the Board learned of certain name changes and an incorrect address. Accordingly, the Board under s. 18(1) of the Act hereby reconsiders and varies Certificate No.117-67 by substituting the name *United Food and Commercial Workers International Union, Local 740-P* for the United Packinghouse, Food and Allied Workers Local 740 and by substituting the name *York Farms, Division of Canada Packers Inc.* for Alberta Canning Division of Canada Packers Limited and by substituting 2720 - 2 A Avenue North, Lethbridge, Alberta as the correct address in place of 26th Street and 22nd Avenue North, Lethbridge, Alberta. The Board has also reconsidered and hereby varies Certificate No. 68-84 by substituting the name *Miscellaneous Employees Teamsters Local Union 987 of Alberta, Calgary, Alberta* in place of Miscellaneous Employees, Local Union No. 987, Calgary, Alberta. In the absence of objection from Trans Canada to an updating of its name as recommended in the Board Officer's report dated August 17, 1987, the Board has also reconsidered and varied Certificate No. 68-84 by substituting the name *Trans Canada Freezers Limited, Lethbridge, Alberta* in place of Trans Canada Freezers, A Division of Interprovincial Freezers Limited, Lethbridge, Alberta.

In summary, the Board's determinations on the matters brought to us are as follows:

1. York acquired part of Trans Canada's business through a transfer;
2. The Board rejects the request of Local 987 for a vote of York employees as to whether it or the U.F.C.W., the existing bargaining agent of York employees, would be the bargaining agent of those employees;
3. The Board has determined that the U.F.C.W. is the bargaining agent of all York plant employees including those formerly employed by Trans Canada and finds its "all plant employee" bargaining unit inclusive of the employees related to the transferred business to be appropriate for collective bargaining;
4. The Board finds it unnecessary to deal further with any other aspect of the matters brought by Local 976, in light of the above determinations.