



**IN THE SUPREME COURT OF NEWFOUNDLAND AND LABRADOR
GENERAL DIVISION**

Citation: *Paladin Security Group Ltd. v. Construction General Labourers, Rock & Tunnel Workers, Local 1208*, 2024 NLSC 14

Date: January 24, 2024

Docket: 202301G3257

BETWEEN:

PALADIN SECURITY GROUP LTD

APPLICANT

AND:

**CONSTRUCTION GENERAL
LABOURERS, ROCK & TUNNEL
WORKERS, LOCAL 1208**

FIRST RESPONDENT

AND:

**NEWFOUNDLAND AND LABRADOR
LABOUR RELATIONS BOARD**

SECOND RESPONDENT

Before: Justice Vikas Khaladkar

On Judicial Review From: A Decision of Newfoundland and Labrador Labour Relations Board, File # 5929, dated the 24th day of May, 2023.

Place of Hearing: St. John's, Newfoundland and Labrador

Date of Hearing: January 16, 2024

Summary:

A decision of the Labour Relations Board was set aside on account of a failure to provide procedural fairness. The Court found that the Labour Relations Board gave inadequate reasons for granting a certification order, and ordered that the matter be remitted to an alternative panel for rehearing.

Appearances:

Nancy F. Barteaux, K.C.	Appearing on behalf of the Applicant
Andrew G. Hurley	Appearing on behalf of the First Respondent
Megan S. Reynolds	Appearing on behalf of the Second Respondent

Authorities Cited:

CASES CONSIDERED: *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65; *Baker v. Canada (Minister of Citizenship & Immigration)*, 1999 SCC 699; *Paladin Security Group Ltd. v. Construction General Labourers, Rock & Tunnel Workers, Local 1208*, 2023 NLSC 105; *Pennecon Maintenance Services Limited v. Fish, Food & Allied Workers*, 2021 NLSC 141

STATUTES CONSIDERED: *The Labour Relations Act*, R.S.N.L. 1990, c. L-1

REASONS FOR JUDGMENT**KHALADKAR J.:****INTRODUCTION**

[1] The Applicant provides security services to Newfoundland and Labrador Health Services (“Health Authority”) throughout the Province of Newfoundland and Labrador (the “Province”).

[2] The Newfoundland and Labrador Labour Relations Board (the “Board”) earlier issued a site-specific Bargaining Unit Order in relation to the Health Authority operations at the Waterford Hospital in the City of St. John’s.

[3] Subsequently, the First Respondent, Construction General Labourers, Rock & Tunnel Workers, Local 1208 (the “Union”) applied for certification in relation to all of the employees of the Applicant, Paladin Security Group Ltd. (“Paladin”), working at the “Rural Site” consisting of the Carbonear General Hospital, The Grace Centre, Dr. Wm. H. Newhook Community Health Centre, Bonavista Peninsula Health Care Centre, Burin Peninsula Health Care Centre and Dr. G.B. Cross Memorial Hospital. The application excluded office, sales and clerical employees, managers, supervisors and those above the rank of supervisor.

[4] The Board received various pieces of correspondence from the parties outlining their positions, together with two Investigatory Reports, with the final report dated February 17, 2023 from Board officer Jennifer Furey. The Investigatory Reports contain a number of items of information pertaining to the proposed bargaining unit, together with the position of the both Paladin and the Union regarding the description of the bargaining unit.

[5] Ms. Furey’s final Investigatory Report references the positions of both parties regarding Paladin’s claim that the Union was knowingly creating fragmentation by applying for certification at specific sites, rather than making an application for a bargaining unit that encompassed all of Paladin’s operations within the Province. These positions had been independently conveyed to the Board by the parties.

[6] The final Investigatory Report outlined the positions of the parties at paragraphs 33 and 34 in some detail. It referenced the full content of both parties’ positions in the main Board file.

[7] The final Investigatory Report noted that Paladin requested a hearing to adduce evidence and make submissions regarding the proposed bargaining unit. The Union took no position with respect to this request.

[8] On April 5, 2023 the Board ordered, following consideration of the representations of the parties, that the appropriate bargaining unit would comprise of the employees of Paladin noted in paragraph [3] above. The ballots cast were referred to the Returning Officer for counting and a Certification Order was issued on April 21, 2023.

[9] On April 18, 2023 Paladin requested that the Board provide reasons for its decision.

ISSUES

- 1. What is the applicable standard of review?**
- 2. Was Paladin denied procedural fairness?**
- 3. Was the Board's decision reasonable?**

ANALYSIS

What is the applicable standard of review?

[10] Pursuant to the Supreme Court of Canada's ruling in *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65, the standard of review is generally reasonableness – unless there is a statutory right of appeal or certain other conditions are met.

[11] Paladin argued that the Board's reasons are so deficient that the reasonableness yardstick simply does not apply. Paladin said that the Board breached its duty of procedural fairness by failing to provide any reasons concerning Paladin's argument that the Union was using a "building block" approach and by failing to address Paladin's arguments concerning the description of the bargaining unit. *Vavilov*, at paragraph 23, specifically excludes reviews related to a breach of natural justice and/or the duty of procedural fairness from review according to the reasonableness standard.

[12] To the extent that one is assessing the adequacy of the reasons given by the Board, Paladin and the Union agreed that the appropriate standard is reasonableness. Reasonableness is, therefore, the standard that I will apply in my analysis if I find that there has been no breach of the duty of procedural fairness.

Was Paladin denied procedural fairness?

[13] The decision of the Board can be distilled as follows:

- Paragraph 6: The Board indicated that it must always weigh arguments against certification with the principle that permits the ability of employees to join a union. The Board said that it was not persuaded that sufficient grounds existed to dismiss the application.
- Paragraph 7: Sets out the description of the bargaining unit sought by the Union.
- Paragraph 8: Sets out the description of the bargaining unit sought by Paladin. (Paladin's description includes a larger geographic area along with a different set of excluded occupations.)

- Paragraphs 8, 9 & 10: Sets out Paladin’s arguments relating to fragmentation and the effect that this might have on its ability to fulfil its day to day obligations under its contract with the Health Authority. The Board acknowledges Paladin’s view that its ability to move Security Officers from site to site would be impeded. The Board also acknowledged Paladin’s submission that there is a strong community of interest among all 15 of its sites and there should be one bargaining unit and one Collective Agreement for all unionized employees.
- Paragraph 11: Sets out the Union’s position that there will be no unnecessary fragmentation or proliferation of bargaining units. It denied that there would be confusion or instability, or that Paladin’s day to day obligations to the Health Authority would be impeded.
- Paragraph 12: The Board said that it was provided with evidence that there was some mobility of people within the description of the bargaining unit but noted there was little or no mobility to/from other locations noted in the Respondent’s proposed description of the bargaining unit due to the geographic distance between the sites and the organizational structure of Paladin. The Board noted that the locations within the bargaining unit description proposed by the Union have lead hands that report directly to the Site Supervisor.
- Paragraph 14: The Board indicated that its role is not to determine if the proposed unit is the “most appropriate”, but whether the proposed unit “is appropriate”. The Board provided its decision in the following terms:

The Board is not persuaded that this Application will result in unnecessary fragmentation and therefore does not find any valid reason to deny this Application. The Board decided that the proposed unit is certainly appropriate for collective bargaining, or stated another way; there is no compelling reason against certifying this bargaining unit.

ANALYSIS

[14] I am of the opinion that the reasons of the Board are sufficiently deficient to warrant intervention by this Court. The following are my reasons for arriving at that conclusion. I need not decide, therefore, whether the Board's decision was reasonable.

[15] *Baker v. Canada (Minister of Citizenship & Immigration)*, 1999 SCC 699, stands for the proposition, noted in paragraph 23 of the decision, that the closeness of the administrative process to the judicial process determine the procedural protections that will be necessary in order to discharge the duty of fairness.

[16] At paragraph 24 of the *Baker* decision, the Supreme Court of Canada indicated that if the enabling statute of the administrative decision-maker does not provide for an appeal then greater procedural protections will be required.

[17] *The Labour Relations Act*, R.S.N.L. 1990, c. L-1 (the "Act"), grants to the Board significant powers in the area of labour law to organize, and supervise, the relationship between employees and employers. The Board is empowered to make its own rules of practice and procedure. The *Act* provides no avenue for appeal of the Board's decisions.

[18] Paladin made two arguments before the Board – firstly, it said that the Union was employing a "building block" approach to organizing – one that made it easier for the Union to get the required votes, but one which created problems for the employer because of the potential proliferation of bargaining units, the need to administer multiple collective agreements and the negative impact that such a process may have on Paladin's relationship with its sole client – the Health Authority. Secondly, Paladin said that the Union's bargaining unit description was too vague and imprecise.

[19] The Board's reasons provide no analysis whatsoever as to why these arguments were rejected.

[20] In *Paladin Security Group Ltd. v. Construction General Labourers, Rock & Tunnel Workers, Local 1208*, 2023 NLSC 105, my colleague, Justice Noel, stated as follows:

114 Paladin asked that the Board consider the circumstances of its request for reasons because of the legal effect the decision had in determining the scope of the bargaining unit (a single-site versus multi-sites contract Paladin had with a single client), which in turn determined the employees forming the bargaining unit. This issue was significant and merited reasons from the Board.

115 Paladin submits the Board's issuance of reasons for the Bargaining Unit Order would assist the Parties to further understand the basis for the Board's reasoning, thereby informing the Parties on the likely scope of future applications for certification made by the Union.

[21] In the circumstances of that case, Justice Noel ordered that it was unreasonable for the Board to deny Paladin reasons for its decision – even though Paladin had been out of time in requesting them. Here there is no such deficit. Paladin requested reasons well within the 30-day time limit that is stipulated.

[22] A failure to provide reasons is no different than a refusal to provide reasons. As Justice Noel noted, the Board has a responsibility to the parties and the public, generally, to justify its reasons on a matter of significant importance to the rights of the parties.

[23] A decision by a quasi-judicial body, such as the Board, needs to be transparent, intelligible and justifiable as was stated by Knickle J. (as she then was) in *Pennecon Maintenance Services Limited v. Fish, Food & Allied Workers*, 2021 NLSC 141, at paragraph 31.

[24] As was noted by the Supreme Court of Canada in *Vavilov* at paragraph 102, reasons that simply repeat statutory language, summarize arguments made and then state a peremptory conclusion are no substitute for statements of fact, analysis, inference and judgment.

CONCLUSION

[25] I find that the Board did not provide adequate, or any, reasons for its decision concerning either the bargaining unit description or the “building block” issue. This had the effect of breaching the Board’s duty of procedural fairness.

[26] I am not prepared to grant *certiorari* as requested by counsel for Paladin. However, I am prepared to order that the matter be remitted to a new panel of the Board for reconsideration. While the manner in which the new panel considers the matter is within its own purview, given the persistent nature of Paladin’s claim that the Union is partaking in fragmentation and utilizing a “building block” approach to certification, I would urge the panel to allow the parties to attend the hearing in person and lead such evidence as is appropriate to justify their respective positions.

[27] Paladin shall have its costs of the Application calculated under Column III.

VIKAS KHALADKAR
Justice