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THE BOARD OF INDUSTRIAL RELATIONS OF THE PROVINCE OF ALBERTA and SHEET METAL AUTO BODY, MOTOR MECHANICS, AND ALLIED PRODUCTION WORKERS, LOCAL NO. 414, EDMONTON, ALBERTA ..... APPELLANTS;

AND

STEDELBAUER CHEVROLET OLDSMOBILE LTD. ..... RESPONDENT.

ON APPEAL FROM THE SUPREME COURT OF ALBERTA, APPELLATE DIVISION

Labour relations—Certification of appellant union as bargaining agent—Error of law by Board of Industrial Relations on face of record—Application by way of certiorari to quash certificate—The Alberta Labour Act, R.S.A. 1955, c. 167.

An application was made to the Alberta Board of Industrial Relations to secure certification of the Sheet Metal Workers' International Association, Local 414, as bargaining agent for a unit of employees of the respondent company. After a hearing before the Board it certified, not the applicant, but the appellant union, as bargaining agent for the unit in question. Objection was taken by the respondent before the Board to certification because, *inter alia,* none of the employees in the proposed unit was properly eligible for membership in the Sheet Metal Workers' International Association in view of the definition of the trade jurisdiction of that union, contained in its constitution. An application, by way of *certiorari,* to quash the certificate issued by the Board was refused by the trial Judge. The respondent's appeal from the trial Judge's decision was allowed by the Appellate Division of the Supreme Court of Alberta. The Board and the appellant union then appealed to this Court.

Held: The appeal should be dismissed.

There was no privative section in *The Alberta Labour Act,* R.S.A. 1955, c. 167, giving to the Board exclusive jurisdiction to determine all questions of fact and law and prohibiting removal of proceedings into any Court by *certiorari.* A review of the proceedings of an administrative Board by way of *certiorari* could be made, not only, on a question of jurisdiction, but also in respect of an error of law on the face of the record, even though the error did not go to jurisdiction.

In the instant case there had been an error of law. The Act contemplated that a trade union, to be a proper bargaining agent, must be one whose objects and membership requirements are in harmony with the interests of the employees in the proposed unit and which permit

*PRESENT: Abbott, Martland, Hall, Spence and Pigeon JJ.

1968

ALBERTA BOARD OF INDUSTRIAL RELATIONS *et al.* *v.* STEDELBAUER CHEVROLET OLDSMOBILE LTD.

them to become members of it. Where the Board erred was in construing the constitution of the applicant union as permitting its general president to authorize the international organizer to organize a local union, *i.e.*, the appellant union, to take in classes of workers not included in the general classification defined in the constitution of the applicant union.

Accordingly, there having been an error of law by the Board, which error appeared on the face of the record, the certification order could be quashed.

[*R. v. Northumberland Compensation Appeal Tribunal, Ex p. Shaw,* [1951] 1 K.B. 711, affirmed [1952] 1 K.B. 338, applied; *Baldwin & Francis Ltd. v. Patents Appeal Tribunal,* [1959] A.C. 663; *R. v. Nat Bell Liquors Ltd.,* [1922] 2 A.C. 128, referred to.]

APPEAL from a judgment of the Supreme Court of Alberta, Appellate Division[1], allowing an appeal from a judgment of Dechene J., dismissing an application by way of *certiorari* to quash a certificate of the Alberta Board of Industrial Relations. Appeal dismissed.

W. S. Ross, Q.C., and *D. A. Stewart,* for the appellants.

John C. Prowse and *William A. Wiese,* for the respondent.

The judgment of the Court was delivered by

MARTLAND J.:—This is an appeal from a judgment of the Appellate Division of the Supreme Court of Alberta[1] which allowed the respondent's appeal from the decision of the learned trial judge, who had refused the respondent's application, by way of *certiorari,* to quash a certificate of the Alberta Board of Industrial Relations issued on August 10, 1965. The certificate certified the appellant, Sheet Metal Auto Body, Motor Mechanics, and Allied Production Workers, Local No. 414, Edmonton, Alberta (hereinafter referred to as "the appellant union"), as bargaining agent for a unit of employees of the respondent comprising "All employees of the Company with the exception of office workers, salesmen and supervisory personnel." The judgment of the Appellate Division quashed this certification.

The facts are not in dispute. An application was made in June, 1965, to the Board of Industrial Relations (hereinafter referred to as "the Board") to secure certification of the Sheet Metal Workers' International Association, Local 414, as bargaining agent for the employees of the respond-

[1] (1967), 59 W.W.R. 269, 61 D.L.R. (2d) 401.

ent in the unit above described. After a hearing before the Board it certified, not the applicant, but the appellant union, as bargaining agent for that unit. Objection was taken by the respondent before the Board to certification because, *inter alia,* none of the employees in the proposed unit was properly eligible for membership in the Sheet Metal Workers' International Association in view of the definition of the trade jurisdiction of that union, contained in its constitution.

Section 105 of *The Alberta Labour Act,* R.S.A. 1955, c. 167, requires each trade union and each branch or local of a trade union to file with the Minister of Industries and Labour a duly certified copy of its constitution, rules and by-laws.

Section 55(1)(*b*) defines a "bargaining agent" as a trade union that acts on behalf of employees in collective bargaining, or as a party to a collective agreement with their employer.

Section 55(1)(*j*) defines a trade union as meaning

> an organization of employees formed for the purpose of regulating relations between employers and employees which has a written constitution, rules or by-laws setting forth its objects and purposes and defining the conditions under which persons may be admitted as members thereof and continue in such membership.

Section 61 requires the Board, upon receipt of an application for certification of a bargaining agent, to inquire into whether the trade union that claims to have been selected by a majority of the employees in a unit is a proper bargaining agent.

Section 63 of the Act provides as follows:

> 63. If the Board is satisfied
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> (*a*) that the applicant for certification as a bargaining agent is a proper bargaining agent,
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> (*b*) that the unit of employees is an appropriate unit for collective bargaining, and
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> (*c*) that a majority of the employees in the unit have selected the applicant to be a bargaining agent on behalf of the employees of the unit
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> (i) by membership in good standing according to the constitution and by-laws of the applicant or by having applied for membership and by having paid the initiation fee required by the constitution and by-laws of the applicant on or not longer than three months before the date of the application for certification was made, or

1968

ALBERTA BOARD OF INDUSTRIAL RELATIONS *et al.* *v.* STEDELBAUER CHEVROLET OLDSMOBILE LTD.

Martland J.

(ii) by the result of a vote conducted or supervised by the Board, of those who were employees in the unit on the date the application was made or such other date as may be fixed by the Board,

the Board shall certify the applicant to be a bargaining agent on behalf of the employees in the unit, but if the Board is not satisfied in respect of any of the matters set out in clauses (*a*) to (*c*) the Board shall refuse to certify the applicant.

The return filed by the Board to the *certiorari* proceedings, in compliance with Rule 865 of the Alberta Rules of Court, which requires the return to include all papers or documents touching the matter, included the minutes of its own meetings, the Constitution and Ritual of the Sheet Metal Workers' International Association and Affiliated Local Unions, its certificate certifying the appellant union as bargaining agent and its reasons for decision in the case of the appellant and Turnbull Motors Ltd., which dealt with the same issue as had been raised in the present proceedings and which, in substance, represented the reasons for its decision in the present case.

Dealing with the issue raised by the respondent that the Sheet Metal Workers' International Association, the union which was the applicant for certification before the Board, had no jurisdiction to accept the employees in the unit as members, because they were all mechanics and not body repair men, the learned trial judge said this:

> In dealing with the question raised in the first ground of objection the return to the certiorari proceedings contains the reasons for decisions delivered by the Board in a previous application by the same Union in which it dealt with the employees of Turnbull Motors Limited, Edmonton, Alberta, and which contained the following paragraphs:
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> "Dealing with the question of jurisdiction, counsel for the respondent stated that in so far as he had been able to ascertain, the only reference to automobiles in the trade jurisdiction appeared in Article 1, Section 5(*s*) as follows:
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> "Any and all types of sheet metal work and coppersmith work in connection with or incidental to the manufacture, fabrication, assembling, maintenance and repair of automobiles, airplanes, pontoons, dirigibles, blimps and other types of air craft and equipment, and all types of aircraft hangars."
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> The representatives of the applicant referred the Board to Article 3, Section 1, which reads in part as follows:
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> "The General President shall preside at all meetings and Conventions of this Association and at meetings of the General Executive Council. He shall preserve order and in all cases where the vote is equally divided in a Convention or meeting of the General Executive Council he shall cast the deciding vote. He shall

enforce all laws of the Association, decide all questions of order and usage, interpret and decide all points of law and controversies and decide all constitutional questions."

He also referred to Article 3, Section 2(*g*) which reads in part as follows:

> "The General President shall have full authority to specify, designate or change the specific territory and classes of work over which each local union or district council shall exercise jurisdiction, to organize and charter additional local unions or district councils in accordance with this Constitution and to determine the specific territory and classes of work over which newly chartered locals or district councils shall have jurisdiction ..."

He submitted that in view of the authority granted the General President that officer had the discretion to allocate jurisdiction to a local union covering the classifications of work falling within the jurisdiction of the applicant. The representatives also advised the Board that at the 1962 International Convention, representations were made to the Constitution Law Committee to include in Article 1, Section 5(*s*) of the constitution mechanics and it was the decision of that committee, upheld on the convention floor, that it was not necessary to amend that portion because it was provided for in the general part of the constitution. He also submitted that since 1956 locals of the applicant have been organizing on a production basis, industrial basis and on the basis of plant maintenance."

That decision refers to a letter from the General President of the Sheet Metal Workers' International Association to Mr. Raymond A. Gall, International Organizer at Edmonton, dated 29 January, 1965, which is stated to be applicable to the present case, and which reads as follows:

> "Please be advised that you have my permission under Article 10, Section 2(*e*) of the International Association's Constitution to organize Auto Body Workers, Motor Mechanics and other Allied Production Workers in the Province of Alberta, and that all such persons are eligible for membership upon application and the payment of the initiation fee which, pursuant to the said section, is hereby set at $1.00."

I am of the opinion, with respect, that the Board's decision is wrong. The General President's authority to "Interpret and decide all points of law and controversies and decide all constitutional questions" (see Article 3, Section 1 of the Union's Constitution above cited), cannot reasonably be wide enough to include an altogether different class of workers than that which is originally covered by the Constitution. There can often be difficult questions arising from the interpretation of a Constitution such as this and it is probably wise that an officer be given the right to decide. But to allow that officer to extend the classes of employees, renders the Constitution itself useless. It removes all meaning from the provisions of Section 55(1)(*j*) of *The Alberta Labour Act*, which defines a "trade union" as an organization having a written constitution and from Section 105 of the Act which requires the constitution to be filed with the Minister of Labour.

The applicant's affidavit shows that it does not have a single employee who could be classified within the terms of the Union's written constitution. The authority given to the General President by Article 3, Section 2(*g*) supra, "to specify, designate or change the specific territory and classes of work over which each local union or district council shall exercise jurisdiction", must, I believe be subject to the *ejusdem generis* rule. He

1968

ALBERTA BOARD OF INDUSTRIAL RELATIONS *et al.* *v.* STEDELBAUER CHEVROLET OLDSMOBILE LTD.

Martland J.

may designate and alter territorial jurisdiction, and vary the classes of workers which local unions may include in their organization, but, in the view I take, he cannot extend the classes of workers to some who are not included in the general classifications listed in Article 1, Section 5(*s*) of the Constitution which is cited above in full.

If, therefore, this were an appeal and I was to substitute my judgment for that of the Board, I would find in favour of the applicant.

Reference should also be made to the following paragraph in the Board's reasons:

> It was the opinion of the Board that in view of the authority vested in the General President under Article 3, Section 2(*g*) that officer did not exceed his powers in issuing the charter to the applicant and allocating the jurisdiction as set out in his letter of January 29, 1965, quoted above.

The learned trial judge went on to say that as this was an application by way of *certiorari* it must rest on lack of jurisdiction, breach of natural justice or an error on the face of the record. In concluding that *certiorari* would not lie he took the view that if the Board had erred it was in respect of a finding of fact, apparently as to the question of whether a majority of the employees in the unit had selected the appellant union as the bargaining agent, and he appears to have decided that the application for membership in the appellant union by a majority of the employees was sufficient for the purposes of s. 63(*c*)(i) whether or not they could obtain membership in the Sheet Metal Workers' International Association under the provisions of its constitution. He does not refer to the requirement of s. 63(*a*) as to the Board being satisfied that the applicant for certification is a proper bargaining agent.

The Appellate Division agreed with the view expressed by the learned trial judge that the Board's decision as to the interpretation of the union's constitution was wrong and also held that, on the record, the Board had erred in law in giving to the word "proper", in s. 63(*a*), a meaning which it would not bear, and the Board order was, accordingly, quashed.

The appellants, before this Court, did not seriously dispute the conclusion of law reached by both the Courts below in respect of the interpretation of the union's constitution. Their position was that the error in law by the Board would not warrant the quashing of its order because it did not relate to the Board's jurisdiction. In the present

case, it was said, the Board's decision was in respect of a matter specifically referred to it by the statute and it could not be disturbed because, in reaching it, there had been an error of law.

I am not in agreement with this submission. *The Alberta Labour Act* does not contain a privative section, such as that contained in the British Columbia *Workmen's Compensation Act,* R.S.B.C., c. 370, s. 76(1), referred to in the judgment of this Court in *Farrell v. Workmen's Compensation Board*[2], giving to the Board exclusive jurisdiction to determine all questions of fact and law and prohibiting removal of proceedings into any Court by *certiorari.* The question, in this case, is as to the extent to which the proceedings of an administrative Board may be reviewed by way of *certiorari.*

In my opinion, such a review can be made, not only on a question of jurisdiction, but in respect of an error of law on the face of the record. That *certiorari* would issue to quash the decision of a statutory administrative tribunal for an error of law on the face of the record, although the error did not go to jurisdiction, was clearly stated in *R. v. Northumberland Compensation Appeal Tribunal, Ex p. Shaw*[3]. That case was referred to by Kerwin J. (as he then was) in *Toronto Newspaper Guild v. Globe Printing Company*[4].

In *Baldwin & Francis Ltd. v. Patents Appeal Tribunal*[5], Lord Reid said, at p. 683:

> Procedure by way of certiorari is available both where there has been "excess of jurisdiction" (which is not a very adequate description) and where error of law appears on the face of the record.

In the *Northumberland* case the Court applied, in respect of a decision of an administrative tribunal, what had been stated in the Privy Council by Lord Sumner in *R. v. Nat Bell Liquors, Limited*[6].

At p. 154, Lord Sumner said:

> There is no reason to suppose that, if there were any difference in the rules as to the examination of the evidence below on certiorari before a superior Court, it would be a difference in favour of examining

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[2] [1962] S.C.R. 48.

[3] [1951] 1 K.B. 711, approved, an appeal, [1952] 1 K.B. 338.

[4] [1953] 2 S.C.R. 18 at 24.

[5] [1959] A.C. 663.

[6] [1922] 2 A.C. 128.

1968

ALBERTA BOARD OF INDUSTRIAL RELATIONS *et al.* *v.* STEDELBAUER CHEVROLET OLDSMOBILE LTD.

Martland J.

it in criminal matters, when it would not be examined in civil matters, but, truly speaking, the whole theory of certiorari shows that no such difference exists. The object is to examine the proceedings in the inferior Court to see whether its order has been made within its jurisdiction. If that is the whole object, there can be no difference for this purpose between civil orders and criminal convictions, except in so far as differences in the form of the record of the inferior Court's determination or in the statute law relating to the matter may give an opportunity for detecting error on the record in one case, which in another would not have been apparent to the superior Court, and therefore would not have been available as a reason for quashing the proceedings. In this connection, reliance was placed on a passage in the opinion of Lord Cairns in *Walsall Overseers v. London and North Western Ry. Co.* (1878) 4 App. Cas. 30, 39. The question for decision there was simply whether or not the Court of Appeal had jurisdiction to entertain an appeal from an order of the Court of Queen's Bench, discharging a rule nisi for a certiorari to quash an order of Quarter Sessions in a rating matter. Lord Cairns, speaking of certiorari generally, said: "If there was upon the face of the order of the Court of Quarter Sessions anything which showed that that order was erroneous, the Court of Queen's Bench might be asked to have the order brought into it, and to look at the order, and view it upon the face of it, and if the Court found error upon the face of it, to put an end to its existence by quashing it." He then turned to the kind of order under discussion, and after stating how much in that matter, both of fact and of law, the Sessions were bound to set out on the face of their order, he proceeded to point out that the statement of what had led to the decision of the Court made the order "not an unspeaking or unintelligible order," but a speaking one, and an order which on certiorari could be criticised as one which told its own story, and which for error could accordingly be quashed.

At p. 156, dealing with the jurisdiction of the superior Court to review the decision of an inferior Court, he said:

> That supervision goes to two points: one is the area of the inferior jurisdiction and the qualifications and conditions of its exercise; the other is the observance of the law in the course of its exercise.

I agree with the Court below in holding that there was, in this case, an error of law. A trade union, which seeks to be certified as a bargaining agent, must have a written constitution, rules or by-laws which, in addition to setting forth its objects, defines the conditions under which persons may be admitted and continue as members (s. 55(1)(*j*)). In my opinion, when that provision is read along with ss. 61(*a*) and 63, the Act contemplates that a trade union, to be a proper bargaining agent, must be one whose objects and membership requirements are in harmony with the interests of the employees in the proposed unit and which permit them to become members of it.

I do not accept the submission of the appellants that, when s. 63(*c*)(i) was amended, in 1964, to speak of "mem-

bership in good standing according to the constitution and by-laws of the applicant or by having applied for membership . . .", this contemplated that an application for membership in a union whose constitution prevented membership being granted would be a sufficient compliance with that paragraph.

The Board was quite properly concerned, in this case, with the matter of the employees' right to membership in the union which had applied for certification. Where it erred was in construing the constitution of the applicant union as permitting its General President to authorize the international organizer to organize a local union, *i.e.*, the appellant union, to take in classes of workers not included in the general classification defined in the constitution of the applicant union. In the result, it certified as a bargaining agent, not the union which had applied, but a local union which purported to have been created by the international organizer of the applicant union by authorization of its General President.

There having been an error of law by the Board, was it on the face of the record? The return, in compliance with the Rules of Court, included the reasons of the Board in the case of Turnbull Motors Ltd., which had raised the same issue as in the present case. This was properly filed by the Board, and thereby it stated the reasons which had led it to grant a certificate in the present case. In my opinion, this made the Board's certificate, to quote Lord Sumner again, " 'not an unspeaking or unintelligible order,' but a speaking one and an order which on certiorari could be criticised as one which told its own story, and which for error could accordingly be quashed".

In my opinion the appeal should be dismissed, with costs.

Appeal dismissed with costs.

Solicitors for the appellants: Ross, McLennan & Ross, Edmonton.

Solicitors for the respondent: Prowse & Wiese, Edmonton.