

**SUPREME COURT OF NOVA SCOTIA**

**Citation:** *CanMar Contracting Ltd. v. Labourers International Union of North America, Local 615*, 2015 NSSC 89

**Date:** 20150326

**Docket:** Halifax No. 434208 and No. 429555

**Registry:** Halifax

**Between:**

CanMar Contracting Limited

Applicant

v.

Labourers International Union of North America, Local 615,

Sean Patrick McSween,

Labour Board (Nova Scotia)

Respondents

and

George Panteleios and Carlos Lopez

Intervenors

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**Judge:** The Honourable Justice Michael J. Wood

**Heard:** March 10, 2015 in Halifax, Nova Scotia

**Written Decision:** March 26, 2015

**Subject:** Judicial Review – Nova Scotia Labour Board – Certification

**Summary:** The respondent union applied for certification of the

employees of CanMar Contracting Limited under Part II of the *Trade Union Act*. The Board did not permit CanMar to challenge union membership cards in the absence of employee intervenors. Board also excluded two vacationing employees from the bargaining unit based on long standing policy referred to as the “snapshot” approach. Board granted certification based on number of union members among employees at work on date of application. Certification was effective as of date of application and not the date of the Board decision.

**Issues:**

- (1) Should the Board have prevented CanMar from challenging union membership cards?
- (2) Was the Board entitled to make the certification order effective as of the date of the union’s application?
- (3) Was it reasonable for the Board to exclude the two absent employees from the bargaining unit for certification purposes?

**Result:**

The Board decision that the lack of employee intervention was a condition that precluded CanMar from arguing the reliability of union membership cards was unreasonable and procedurally unfair. Judicial review granted on this issue.

The Board was entitled to determine the effective date of the certification order and using the date of application was reasonable. Judicial review on this issue dismissed.

*Trade Union Act* required Board to consider employee community of interest in defining the appropriate bargaining unit. The employees were absent for only the date of application but otherwise appeared to share community of interest with other employees. Use of “snapshot” approach did not include assessment of employee community of interest. Board decision did not explain why this interest was irrelevant in determining composition of appropriate bargaining unit. Decision unreasonable and judicial review granted.

Matter referred back to Board for consideration of two issues on which review granted. Remaining aspects of Board decision still in effect and not to be relitigated.

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