

1992

S.H. No. 81586

IN THE SUPREME COURT OF NOVA SCOTIA
TRIAL DIVISION

BETWEEN:

ODYSSEY CAPE BRETON TOURIST ATTRACTIONS LIMITED

-and-

ENTERPRISE CAPE BRETON CORPORATION

Applicants

-and-

**THE LABOURERS' INTERNATIONAL UNION OF NORTH
AMERICA, LOCAL 115,**

-and-

LABOUR RELATIONS BOARD (Nova Scotia)

Respondents

D E C I S I O N

HEARD BEFORE:

At Halifax, Nova Scotia before the
Honourable Mr. Justice Robert MacDonald,
in Chambers, June 19, 1992

DECISION:

June 19, 1992

**WRITTEN RELEASE
OF ORAL DECISION:**

COUNSEL:

Karin A. McCaskill, Solicitor for the applicant

Raymond F. Larkin, Solicitor for the respondent, the Labourers' International Union of North America, Local 1115

Jonathan Davies, Solicitor for the respondent, Labour Relations Board (Nova Scotia)

MACDONALD, J.: (Orally)

This is an **inter parties** application for an order in the nature of a **certiorari** to set aside the majority decision of the Labour Relations Board, which bound the applicant, Odyssey Cape Breton Tourist Attractions Limited [Odyssey], to a collective agreement entered into between the crown corporation, Enterprise Cape Breton Corporation [ECBC] and the respondent, Union, as the successor of ECBC by virtue of s.31 of the **Trade Union Act**.

The facts are substantially agreed to and are succinctly set out in the respondent's brief. The decision of the Labour Relations Board (Nova Scotia) is perhaps unique in that the members of that board have come to a majority decision while the chairman has filed a minority report. I believe that it is common ground between the parties that all formal labour matters between the employer and the union up until the summer of 1990 was supervised by the Canadian Labour Relations Board.

The Union had been certified as the bargaining agent for all employees of Cape Breton Development Corporation employed at the Dundee Golf Course as of August 1979 by the Canada Labour Relations Board. ECBC was developed as a wholly owned subsidiary of Devco and was employer operating at Dundee. ECBC sold its interests in November of 1990 to Odyssey, a company incorporated under the **Nova Scotia Companies Act**.

The dispute is essentially whether Odyssey is bound by the

Collective Agreement entered into between ECBC and the Union, as the successor of ECBC.

In the summer of 1989 the union filed its collective agreement with the Minister of Labour. That collective agreement was effective between it and Enterprise Cape Breton Corporation from January 1, 1989 to December 31, 1989. I do not attach any significance to this .

S.4 of the **Trade Union Act** (Nova Scotia) appears to limit the application of the **Act** and matters within the legislative control of the Province. The applicant argues that s. 31 of the **Trade Union Act** does not apply because the term "employer" as used did not apply to the vendor, Enterprise Cape Breton Corporation, a Crown Agent, in these circumstances.

The applicant also, in my opinion, made a persuasive argument on the immunity of a crown agent unless it is expressly included under the terms of an **Act**. In this case, on the facts and arguments before me. I adopt the reasons and decision of the Chairman Darby and therefore grant the application.

Chairman Darby expressed the opinion that his findings however distasteful or unreasonable, the results were inescapable. Because, I presume, of the strict interpretation that had to be put on the pertinent legislation. However, the union and its members have other, and probably more simple options by which they can

express and obtain their rights if they so desire.

A handwritten signature in blue ink, appearing to be 'W. J. ...', written in a cursive style.

Halifax, Nova Scotia