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Docket: 10/17

Citation: *Bluebird Investments Limited v. International Association of
Bridge, Structural, Ornamental and Reinforcing Ironworkers, Local 764*,
2011 NLCA 78

**IN THE SUPREME COURT OF NEWFOUNDLAND AND LABRADOR
COURT OF APPEAL**

BETWEEN:

BLUEBIRD INVESTMENTS LIMITED APPELLANT

AND:

INTERNATIONAL ASSOCIATION
OF BRIDGE, STRUCTURAL,
ORNAMENTAL AND
REFINFORCING IRONWORKERS
LOCAL 764

FIRST RESPONDENT

AND:

LABOUR RELATIONS BOARD
FOR THE PROVINCE OF
NEWFOUNDLAND AND
LABRADOR

SECOND RESPONDENT

Coram: Welsh, Mercer and Hoegg, JJ.A.

Court Appealed From: Supreme Court of Newfoundland and Labrador,
Trial Division (General), 200801T2906

Appeal Heard: November 9, 2011

Judgment Rendered: December 8, 2011

Reasons for Judgment by Mercer, J.A.

Concurred in by: Welsh and Hoegg, JJ.A.

Counsel for the Appellant: Gregory Anthony
Counsel for the First Respondent: Mark Murray
Counsel for the Second Respondent: Jamie Martin

Mercer, J.A.:

[1] The appellant contractor seeks a court order setting aside two decisions of the respondent board. The latter decision for which judicial review was sought had rejected the contractor's request to rescind an earlier certification order in favour of the respondent union.

BACKGROUND

- *Certification Application*

[2] On August 25, 2006 the first respondent (Union) filed an application for certification with the second respondent (Board) seeking to represent a group of employees of the appellant (Bluebird). The bargaining unit for which certification was sought was described as:

All employees below the classification of Superintendents, performing work classified under the jurisdiction of Ironworkers in the Commercial and Industrial sector, such as rigging, burning, welding, placing, [tying], loading, unloading, carrying, placing and field fabricating of reinforced steel (rebar) and wire mesh in the Province of Newfoundland and Labrador.

The application identified three employees of Bluebird whom the Union claimed were performing ironworking. A vote of those employees was conducted on September 1, 2006.

[3] On September 13, 2006 Bluebird filed a reply to the certification application stating that on the date of the application it had no employees performing work within the trade jurisdiction of the Union. The three named employees were said to have been performing carpentry work. Bluebird stated that it did not hire workers to perform work exclusively within the Union's trade jurisdiction and that its practice was to sub-contract structural steel and miscellaneous metals work. Its reply gave information respecting its current five projects, including reference to employees at a job-site at Duck Pond working on "[c]onstruction of a pre-engineered building". The employees were classified by Bluebird as carpenters, carpenters' helpers and labourers. Bluebird contended that it would not be

appropriate to constitute a bargaining unit comprised only of employees within the commercial and industrial sector of the construction industry as it would exclude other of its employees who share the same community of interest, regardless of the sector of the construction industry in which they worked.

[4] An investigating officer from the Board filed a report on November 9, 2006 to which both parties replied. The Board did not conduct a hearing and on March 30, 2007 ordered that the appropriate bargaining unit be “all Ironworkers and Ironworker Apprentices working for the Employer (Bluebird) in the Province of Newfoundland and Labrador”. A determination was made respecting the three ballots cast and on April 4, 2007 the Union was certified to be the bargaining agent for ironworkers employed by Bluebird.

REVIEW APPLICATION

[5] On May 18, 2007 Bluebird applied to the Board for a review of its order of March 30, 2007. That review application was made pursuant to section 19(2) of the *Labour Relations Act*, R.S.N.L. 1990, c. L-1 (the *Act*), which states:

19(2) The board may review, rescind, amend, alter or vary an order or decision made by it or by a panel and may rehear an application before making an order in respect of it.

[6] The review application sought (a) to exclude from the bargaining unit work with respect to the erection of structural steel and miscellaneous metals and (b) to include within the bargaining unit its employees at the Duck Pond project who on the date of the application for certification had been working on construction of a pre-engineered steel building. As noted by Bluebird, inclusion of those employees in the bargaining unit would mean that the Union would have lacked the required support to ground its certification application. A significant portion of the submissions on the review application concerned the relief noted in sub-para. (a) above. These submissions were ultimately rejected by the Board and were not raised on this appeal. Therefore, that matter will only be examined insofar as the Board's reasons in that regard are connected with its analysis of the matter now before this Court.

[7] In its review application Bluebird emphasized that the Union was now claiming jurisdiction over the employees working on erection of the pre-engineered steel building at Duck Pond, which the Union had not asserted during the certification proceedings. During the certification proceedings Bluebird had stated those employees to be carpenters, carpenters' helpers and labourers. Bluebird now submitted that "as it is the practice of the board to consider the work performed by employees and not their classifications when determining whether or not they should be included within a proposed bargaining unit, those employees should have been considered in respect of ... the Application for Certification". Bluebird provided documents to establish that steel erection on the Duck Pond building was underway from August 23, 2006 and was ongoing at the time the certification application was filed. It submitted that the Board erred in failing to include the Duck Pond employees in the bargaining unit when considering the certification application.

[8] In its response to the investigating officer for the Board, the Union stated that it was not aware during the application for certification process that the Duck Pond employees were performing work within the jurisdiction of the Union and noted the stated position of Bluebird respecting those employees during the certification process. In its reply to the investigating officer's report, Bluebird stated that "it was not aware, at the time of the Application for Certification, of the intent of the Union to claim jurisdiction over workers who were performing work with respect to the erection of pre-engineered steel buildings as Bluebird was under the understanding that this was work which fell under the jurisdiction of carpenters, carpenters' helpers and labourers".

[9] Bluebird was unsuccessful in its review application for the reasons filed by the Board in December 10, 2008 (Board Decision). Bluebird's contention that the Board erred in failing to include its Duck Pond employees in the proposed bargaining unit was considered and rejected by the Board. The Board Decision stated, among other things:

When considering this argument, the Board was not persuaded that there was a mistake of fact. When a matter comes before the Board, it is incumbent on the parties to provide accurate information. Indeed, the parties' documents filed are verified by affidavit. The Board reviewed the documents in the certification file and noted that the contents of Bluebird's sworn Reply contradicted its "mistake of fact" argument in its reconsideration application. Further, the contents of the documents filed by Bluebird in this reconsideration matter also contradict its "mistake of fact" argument.

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...

There was no mistake of fact apparent to the Board upon reviewing the sworn documentation in the certification file, having regard to Bluebird's assertions in the reconsideration matter. Bluebird swore in its Reply to the certification application that, of its 38 employees, only 3 did some steelwork/rebar in the past. Bluebird further stated that it subcontracts the erection of steel. Now, in its reconsideration application, Bluebird is directly contradicting its Reply in the certification application.

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In any event, the Board supports the Union's submission that, if there was a mistake of fact, then it arose as a result of the conflicting evidence put forth by Bluebird to the Board. The Board cannot condone an employer providing two different versions of the facts. To repeat, in this matter, Bluebird stated that it subcontracts out erection of steel and doesn't employ employees performing steelwork, other than the three employees who did some occasional placing and tying; then Bluebird said that it indeed employed ten other employees who performed steelwork on the date of the application. This information, if accurate, was in the employer's control and could have been raised in the certification application in order to defeat it. Having said this, however, as earlier stated, the Board is not satisfied that there was a mistake of fact due to the conflicting submissions of Bluebird.

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[10] The Board specifically considered Bluebird's assertion respecting its lack of awareness of Union jurisdiction over work on pre-engineered steel buildings. The Board stated:

Furthermore, it was not reasonable for Bluebird to have assumed that the Ironworkers were only seeking to represent Ironworkers performing placing and tying of rebar. It was not reasonable due to the description of the proposed bargaining unit wherein the words "such as" were used. Bluebird chose to ignore the words "such as" and chose to present its case on that basis. These words were, as the Union submitted, indicative of the fact that the list of work was not exhaustive. Further, it was not reasonable for Bluebird to have assumed that the Board would subdivide a trade for the purposes of certification. Moreover, it is difficult to reconcile that there was a mistaken assumption in light of the fact that Bluebird raised Article 26.01 of the CLRA collective Agreement with the Board Officer in the certification matter.

In any event, the Board has to be able to accept sworn documents at their face value. The Board cannot be constantly proactively inquiring as to the parties' assumptions in certification files and determining whether their assumptions are correct.

Further on this point, the Board noted that there was no indication by the Union in the reconsideration file that the Union is now asserting that the Duck Pond employees were performing ironwork on the date of the application. The Union indicated to the Board Officer that it was unaware of what the Duck Pond employees were doing. Indeed, it is not always reasonably possible for unions to identify all employees performing work in the proposed bargaining unit; such information is in the employer's control.

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As a final comment, the Board cannot accept an unreasonable mistaken assumption as a rationale for altering a previous order. Such would surely cause a floodgate of parties filing reconsideration requests due to information which had not been disclosed to them at the time of a previous decision. The time for full disclosure of information to the Board in a parties' control is at the time of the original matter.

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... If there was actually a mistake of fact, then it was due to the employer's failure to disclose. If we assume the failure to disclose was inadvertent, then it was due to an unreasonable mistaken assumption by Bluebird; the Board cannot alter its previous decision on such a basis. Similarly, the Board would never alter a decision if the parties' failure to disclose was intentional. A decision altered in either of these circumstances, would open floodgates and compromise the integrity of the Board's decision-making process.

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[11] A judicial review application was taken by Bluebird. As agreed by Bluebird and the Union the chambers judge applied the reasonableness standard of review as set forth in *Dunsmuir v. New Brunswick*, 2008 SCC 9. He reviewed the submission concerning inclusion of the Duck Pond employees in the proposed bargaining unit and observed:

[49] In effect, what the Employer is saying is that since the vote has been taken, we now wish to bring forward employees that should have been considered earlier.

[50] The Board, due to the nature of the work it does pursuant to s.38, Certification Votes, has to be able to rely on affidavit evidence put before the Board as being accurate and correct. Oftentimes, time does not dictate a full hearing on such matters. The legislation allows boards to make such decisions without full hearings and based on information put before the Board as accurate. If this is not adhered to by the Employer or the Union, it could result in anarchy. Reconsideration hearings put a heavy onus on the party requesting a review. There has to be fresh evidence that was not available to the Board to allow for a rescission of the previous decision.

...

[12] Having referred to the passage of the Board Decision at p. 20 quoted above in my para. 9 the chambers judge continued:

[51] To that statement, the Employer, Bluebird, in this judicial review, argues that the Board does not understand the different work its employees are doing in the construction of pre-engineered, prefabricated structures, which is what the 10 employees Bluebird says should be included in the vote, and work contracted out as structural steel contractors, such as the Shoal Harbour water treatment plant, where its employees were only involved in tying and placing rebar.

[52] If in fact the Board did not understand this subtle distinction, it is because the Employer never made this clear in its reply and its original affidavit.

[53] Bluebird, in the judicial review, says the mistake of fact was that the Steelworkers were claiming jurisdiction over Duck Pond employees once the Board ordered the unit as being its bargaining agent.

[54] The Board referred to this issue when it pointed out in the reconsideration ruling that the Steelworkers' application did not only specify one area of jurisdiction by referring to the placing and tying of rebar. The Employer had to be or should have been aware that once the bargaining unit was ordered by the Board to be the bargaining agent of the Union, that the unit would represent all employees of Bluebird who did any type of Steelworkers' work. The Employer cannot wait until a vote is taken and after it goes against the Employer, now add new employees that the Union now deems to be doing Ironworkers' work after a proper vote. ...

[13] The chambers judge found that the Board's reasons for the decision on the reconsideration application were "coherent, transparent and logical" and based on the evidence and submissions – Trial Decision, para. 55. He concluded:

[56] Both the Original Order of the Board and the Reconsideration Order were reasonable, based on the information placed before the Board. The Board gave reasons for not including the 10 employees from the Duck Pond project in its reconsideration decision. The outcome was a reasonable one; it was not necessarily the only outcome that could have been made.

[57] The Employer or the Union usually only gets “one kick at the can”. Bluebird has had two kicks at the same can. A third kick is unreasonable, considering all of the circumstances. If there was a reasonable mistake of fact, it was Bluebird taking a narrow view of the Steelworkers’ jurisdiction, when in fact a closer look would have revealed that the Union had jurisdiction to cover putting together of prefab buildings, such as was being done by the employees at Duck Pond. The Employer, Bluebird, ignored this at its own peril and is therefore responsible for any results or a consequence of any of the results on itself.

APPEAL SUBMISSIONS AND ANALYSIS

[14] Bluebird and the Union submitted that the chambers judge correctly found that the appropriate standard of review was reasonableness. I agree. In analyzing the submissions on this appeal I find it helpful, as did the chambers judge, to note the guidance provided by the Supreme Court of Canada on the application of the reasonableness standard of review as follows:

[25] ... *Dunsmuir* recognized that with or without a privative clause, a measure of deference has come to be accepted as appropriate where a particular decision had been allocated to an administrative decision-maker rather than to the courts. This deference extended not only to facts and policy but to a tribunal’s interpretation of its constitutive statute and related enactments because “there might be multiple valid interpretations of a statutory provision or answers to a legal dispute and that courts ought not to interfere where the tribunal’s decision is rationally supported” (*Dunsmuir*, at para. 41). ...

...

[59] Reasonableness is a single standard that takes its colour from the context. One of the objectives of *Dunsmuir* was to liberate judicial review courts from what came to be seen as undue complexity and formalism. Where the reasonableness standard applies, it requires deference. Reviewing courts cannot substitute their own appreciation of the appropriate solution, but must rather determine if the outcome falls within “a range of possible, acceptable outcomes which are defensible in respect of the facts and law” (*Dunsmuir*, at para. 47). There might be more than one reasonable outcome. However, as long as the process and the outcome fit comfortably with the principles of justification,

transparency and intelligibility, it is not open to a reviewing court to substitute its own view of a preferable outcome.

Canada (Citizenship and Immigration) v. Khosa, 2009 SCC 12

[15] The appeal focused on whether the chambers judge erred in his application of the standard of reasonableness and therefore the appellate standard of correctness applies to that decision – *Burke v. NLAPPE et al.*, 2010 NLCA 12.

[16] Bluebird framed the appeal issue as follows:

Was the decision of the Board not to include, within the proposed bargaining unit, employees who were performing work at the Duck Pond Project unreasonable?

[17] Bluebird contended that if the bargaining unit includes those erecting pre-engineered steel buildings then its Duck Pond employees ought to have been included in the certification vote. Bluebird maintained that:

- on the date of the application for certification it had employees working on construction of a pre-engineered steel building at Duck Pond;
- it had not considered this as falling within the Union's jurisdiction because of its past practice of using carpenters, carpenters' helpers and labourers to perform that work;
- it had included full particulars on the Duck Pond project in its reply to the application for certification;
- the Union was fully aware of the work that Bluebird's employees were doing at the Duck Pond project and the Union had explicitly denied that it was seeking to represent them; and
- following certification the Union changed its position and asserted jurisdiction over the work at Duck Pond.

[18] Based on the foregoing, Bluebird submitted that there had been a mistake of fact as to whether the work at the Duck Pond project was within the Union's trade jurisdiction and that such mistake should not prejudice the right of the workers on that project to participate in the certification process. Bluebird stated that the Board had a duty to take whatever steps were

necessary to determine the employees' wishes, citing sections 18, 38(1) and 47(1) of the *Act*, and that it was therefore incumbent on the Board, once aware of the Union's assertion of jurisdiction over the Duck Pond project, to determine the wishes of the affected employees.

[19] Bluebird stated that the Board had inaccurately concluded that Bluebird had advanced conflicting positions on whether its employees performed steelwork. It stated that it had maintained a consistent position and had always drawn a clear distinction between structural steel and miscellaneous metals work, which it contracted out, and the erection of pre-engineered steel buildings, which it considered to be within the trade jurisdiction of carpenters. Bluebird further stated that it was unreasonable for the Board to find that Bluebird was aware during the certification process of the Union's jurisdiction respecting the erection of pre-engineered steel buildings. Bluebird contended that the Board Decision lacked justification, transparency and intelligibility and that its outcome did not fall within the range of possible, accepted outcomes.

[20] Bluebird argued that the chambers judge likewise made incorrect findings respecting its alleged conflicting positions during the certification and review processes and that the chambers judge erred in concluding that the Board Decision was reasonable and ought not to be disturbed.

[21] It was clear from Bluebird's submissions that its past practices respecting various aspects of steelwork strongly influenced its stance on the certification application and the ensuing review application. In the review application Bluebird stated:

8. ... as [its] past practice has been to contract out structural steel and miscellaneous metals work to steel fabrication and erection contractors, and as the Application for Certification made specific reference to reinforcing steel (rebar), Bluebird assumed that the Union was seeking to represent employees who perform work with respect to the rigging, burning, welding, placing, tying, loading and unloading, carrying and field fabrication of reinforcing steel, more commonly known as rebar.

The foregoing was key to Bluebird's submission that the certification order was inappropriate in that it included work within the trade jurisdiction of the Union that was not performed by employees of Bluebird, namely work on the erection of structural steel and miscellaneous metals.

[22] In similar manner its past practice of regarding the erection of pre-fabricated steel buildings as carpentry work was cited by Bluebird on this appeal as explanation for its failure during the certification process to seek inclusion of its Duck Pond employees in the bargaining unit – Appellant’s Factum, paras. 30 and 46.

[23] The Board Decision explicitly addressed these assumptions that Bluebird had made based on its past practices. It rejected Bluebird’s contentions that the certification order should be varied by (a) excluding from the bargaining unit work it had previously sub-contracted to others and (b) including in the bargaining unit employees it had previously classified as carpenters. The Board regarded the contentions as based on an incorrect interpretation of the bargaining unit description in the certification application which interpretation was founded on unreasonable assumptions. The Board stated:

Bluebird asserted that it assumed that the certification application was restricted to employees performing rebar/steelwork rather than employees who were carrying out work with respect to the erection of a pre-engineered steel building. In essence, Bluebird is asserting that the certification application was for Ironworkers who performed a portion of the work in the Ironworkers’ jurisdiction, and it was not for those who performed other types of work in the Ironworkers’ jurisdiction. This was a mistaken assumption by Bluebird and not a reasonable one. As stated by the Union, its use of the words “such as” in its proposed bargaining unit description means that the list contained therein is illustrative, not exhaustive.

Further, Bluebird’s mistaken assumption was unreasonable in light of the fact that, in the construction industry, trade based certifications create boundary lines between trades, not within a trade. Bluebird is suggesting that it is appropriate for the Board to engage in an exercise of dividing Ironworkers, in this matter, into at least two groups; one group which performs rebar related work and another which erects steel. The Board does not accept that it is appropriate to subdivide trades by restricting certification based on the type of work performed within a trade. Such would create chaos within a trade and would surely lead to disharmonious labour relations.

pp. 13–14

...

... The Board’s practice is to certify trade-based bargaining units using a general description of the trade, not to divide the trade based on the types of tasks

performed by the employees of the employer. To be clear, in the certification order, the Board's description of the bargaining unit is substantively consistent with that for which application was made, being a trade-based bargaining unit of Ironworkers.

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...

Furthermore, it was not reasonable for Bluebird to have assumed that the Ironworkers were only seeking to represent Ironworkers performing placing and tying of rebar. It was not reasonable due to the description of the proposed bargaining unit wherein the words "such as" were used. Bluebird chose to ignore the words "such as" and chose to present its case on that basis. These words were, as the Union submitted, indicative of the fact that the list of work was not exhaustive. Further, it was not reasonable for Bluebird to have assumed that the Board would subdivide a trade for the purposes of certification. Moreover, it is difficult to reconcile that there was a mistaken assumption in light of the fact that Bluebird raised Article 26.01 of the CLRA Collective Agreement with the Board Officer in the certification matter.

In any event, the Board has to be able to accept sworn documents at their face value. The Board cannot be constantly proactively inquiring as to a parties' assumptions in certification files and determining whether their assumptions are correct.

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[24] I find no flaw in the Board's logic or grammatical analysis in the above quoted passages. It was clear from the certification application that the Union was seeking certification of a bargaining unit comprised of all employees performing work under the jurisdiction of the Union in the commercial and industrial sector of the construction industry. In this appeal Bluebird is not disputing the Board Decision as it pertains to inclusion of previously sub-contracted steel erection work in the bargaining unit. Its position respecting the classification of the work on the erection of pre-engineered steel buildings appears to be based solely on its past practice. There was no evidence before the Board that Bluebird's past practice was generally accepted in the construction industry and therefore formed a reasonable basis for Bluebird's stance during the certification process. The Board's conclusion that Bluebird in its reply to the application for certification made unreasonable assumptions is justifiable on the facts.

[25] Bluebird asserted that it had provided full particulars on the Duck Pond project in its reply to the application for certification and that the Union was “fully aware” of the nature of that work when it explicitly limited its application to three named employees. With respect these assertions are not supported by the evidentiary record before the Board. Bluebird’s reply to the application for certification identified the Duck Pond project as being “construction of a pre-engineered building” and identified its employees there as carpenters, carpenters’ helpers and labourers. I note that the building was not stated to be a steel building, nor was the stage of construction described. Moreover, Bluebird did not advance the proposition that all construction on a pre-engineered steel building would be properly classified as steelwork. Work preliminary to erection of the steel frame or subsequent work could lie outside the Union’s trade jurisdiction. Bluebird has not established that the evidence before the Board on the review application necessitated a finding that the Union was fully aware during the certification proceedings of the nature of the work then being performed at the Duck Pond project.

[26] Moreover I do not accept the submission that the Union – not Bluebird – was in the best position to determine whether, during the certification process, the work being carried out on erection of the pre-engineered building was within the Union’s trade jurisdiction. Clearly Bluebird was in the best position to know the nature of the work being carried out by its employees and could readily have checked to determine the appropriate trade jurisdiction.

[27] Bluebird asserted that the Board and subsequently the chambers judge “inaccurately concluded that Bluebird was advancing conflicting positions before the Board” – Appellant’s Factum, paras. 43–51. That assertion is not sustainable. Bluebird in its reply to the application for certification had maintained that it had no employees working within the Union’s trade jurisdiction, a position it explained on the basis that the past practice was to treat the erection of pre-fabricated steel buildings as carpentry work. Following certification, Bluebird in its review application described the work at the Duck Pond project during the time frame of the certification process as steel erection and within the Union’s trade jurisdiction. Its review application included the following statements:

24. ... Paragraph 4 of the Exhibit notes that Bluebird continued the erection of steel for the building today with approximately 65% of the large steel erected by days end. Bluebird had one supervisor and 10 carpenters employed on the site.

25. Bluebird says that on the date of the Application for Certification, the following employees were employed at the Duck Pond Project Site with respect to the erection of the pre-engineered steel building: ...
26. Bluebird says that to the best of its knowledge, information and belief, the Union now claims jurisdiction over work with respect to the erection of pre-engineered steel buildings. Bluebird says that regardless of the classification of the workers as “carpenter”, “carpenter helper” or “labourer” these employees were employed and were carrying out work with respect to the erection of a pre-engineered steel building which work the Union now claims falls within the trade jurisdiction of the Union.
27. Bluebird repeats the foregoing and says that the employees listed in paragraph 25 above were performing work within the trade jurisdiction of the Union and as such were employed as Ironworkers and Ironworker Apprentices working for the employer in the Province of Newfoundland and Labrador. Bluebird says further that the above-named employees should have been included within the proposed bargaining unit for the purposes of consideration of the Application for Certification.

[28] It is clear therefore that in the review application Bluebird did not seek a determination from the Board that the erection of the pre-engineered steel building was outside the Union’s trade jurisdiction. It apparently accepted that such work was covered by the certification order and requested that the Board revisit the certification order to include in the bargaining unit the employees it had previously identified as carpenters, carpenters’ helpers and labourers. The Board characterized the differing positions taken by Bluebird during the certification process and upon the review application as contradictory. The Board’s characterization is reasonable and Bluebird’s submissions in that regard do not provide a basis for disturbing the Board Decision or that of the chambers judge.

[29] Bluebird further contended that the Board erred in failing “to consider the wishes of the [Duck Pond] employees and/or to interview the affected employees to determine whether or not they were performing work within the trade jurisdiction of the Union”, which Bluebird characterized as a “complete disregard for the rights of the workers ...” and therefore contrary to the purpose and intent of the *Act* – Appellant’s Factum at paras. 66 and 68.

[30] The answer to that contention requires a reiteration of some of the matters canvassed above. The Board should not be faulted for failing to interview the Duck Pond employees during the certification process when Bluebird, the employer, on the basis of unreasonable assumptions had stated

in its reply that it had no other employees within the Union's trade jurisdiction. In the review application Bluebird did not request an investigation of the nature of the work of its Duck Pond employees at the relevant time. Rather it stated that the employees were performing work within the Union's trade jurisdiction and requested re-opening the certification proceeding to include those employees in the bargaining unit. Bluebird's request, if successful, would surely have led to a revocation of the certification, as the claim would have lacked the required support of the proposed bargaining unit stipulated in s. 47(1) of the *Act*.

[31] In the above circumstances it is disingenuous for Bluebird to argue that the Board erred in failing to investigate the nature of the work of its Duck Pond employees.

[32] Having considered the submissions as noted, I find that the chamber's judge was correct in his conclusion that the Board Decision was reasonable. As the Board was concerned about the effect of the requested order on the integrity of its decision making process, it was unwilling to alter its previous certification decision based on information that Bluebird had failed to disclose owing to its unreasonable assumptions. The Board's reasoning was coherent, logical, based on the evidence placed before the Board and the stated outcome clearly fell within the "range of possible, acceptable outcomes which are defensible in respect of the facts and law" – *Dunsmuir*, paragraph 47.

[33] The appeal is dismissed. The Union shall have its costs on a party and party basis.

K. J. Mercer, J.A.

I Concur: _____
B. G. Welsh, J.A.

I Concur: _____
L. R. Hoegg, J.A.