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Case Name:

Firestone Energy Corp. (Re)

RE: An application for certification as bargaining agent brought by Construction Workers' Union (CLAC) Local No. 63 affecting Firestone Energy Corporation

[2004] Alta. L.R.B.R. LD-060

[2004] A.L.R.B.D. No. 71

Board File No.: CR-03438

Alberta Labour Relations Board
J.L. Wallace (Vice-Chair)

October 14, 2004.
(6 paras.)

Appearances:

No appearances mentioned.

LETTER DECISION

¶ 1 J.L. WALLACE, VICE-CHAIR:-- On May 19, 2004 a panel of the Labour Relations Board (Wallace, Ervin, Nielsen) heard the application of Construction Workers Union (CLAC), Local No. 63 ("CLAC") for certification for a unit of general construction millwrights employed by Firestone Energy Corporation (the "Employer"). The parties attended by counsel and gave argument before the Board in response to questions raised by the Board on April 20, 2004, the first date set for hearing of the matter.

¶ 2 The Board's officer recommended that the application be dismissed as untimely because of the existence of a "wall to wall" collective agreement negotiated on a voluntary basis between CLAC and the Employer. CLAC objected to the officer's report on the basis that it had lacked representative capacity in respect of millwrights at the time the collective agreement was concluded, there being no millwrights then employed. The Employer supported CLAC's objection.

¶ 3 The Board panel invited argument on whether the negotiation of a collective agreement covering empty classifications, and the "disavowal" of that agreement for purposes of rendering a subsequent certification application timely, was contrary to sound labour relations and should be disapproved by the Board.

¶ 4 By argument, the parties demonstrated to the Board's satisfaction that previous authorities of this Board, notably CLAC, Loc. 63 et al. v. Midwest General Contractors [2000] Alta. L.R.B.R. 86; OE, Loc. 955 v. Vertex Construction Services Ltd. and CLAC [1999] Alta. L.R.B.R. 183 (reconsidered [2000] Alta. L.R.B.R. 60); and Carpenters, Loc. 1325 v. J.V. Driver Installations Ltd. et al. [2003] Alta. L.R.B.R. 282, articulate principles by which the practice in question should not be considered to bar CLAC's application for certification for the millwright unit. We accept that such a "wall to wall" collective agreement is not in law a collective agreement with respect to the empty trades unless and until the trade union gains representative capacity through the hiring of its

members. Failing that, the trade union may establish its bargaining rights in the normal way, by applying for certification with the requisite support from employees in the unit.

¶ 5 Though this panel remains concerned that the existence of the "wall to wall" collective agreement may give the wrong impression to employees and other trade unions that a valid bargaining relationship is in force in respect of the previously empty trades, and thus inhibit employee choice in collective representation, we acknowledge that this is not a case to re-examine the Board's case law and the practice here followed.

¶ 6 For these reasons, the Board upheld CLAC's objection, held that the application is timely, and directed a representation vote.

J.L. WALLACE, VICE-CHAIR

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