

BRITISH COLUMBIA LABOUR RELATIONS BOARD

THE BOARD OF SCHOOL TRUSTEES OF SCHOOL
DISTRICT NO. 39 (VANCOUVER)

(the "Employer" or "VSB")

-and-

CONSTRUCTION, MAINTENANCE AND ALLIED
WORKERS BARGAINING COUNCIL

("CMAW")

-and-

UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA,
LOCAL NO. 1995

("Carpenters Local 1995")

-and-

INTERNATIONAL ASSOCIATION OF MACHINISTS AND AEROSPACE WORKERS,
LODGE NO. 692

("Machinists 692")

-and-

BC PROVINCIAL COUNCIL OF CARPENTERS

("BCPC")

-and-

INTERNATIONAL UNION OF BRICKLAYERS AND ALLIED CRAFTSWORKERS
LOCAL 2 BRITISH COLUMBIA

("Bricklayers")

-and-

BARGAINING COUNCIL OF VANCOUVER SCHOOL BOARD CONSTRUCTION AND
MAINTENANCE TRADE UNIONS

("VSB Council")

-and-

SHEET METAL WORKERS' INTERNATIONAL ASSOCIATION, LOCAL NO. 280

("Sheet Metal 280")

-and-

UNITED ASSOCIATION OF JOURNEYMEN AND APPRENTICES OF THE PLUMBING
AND PIPEFITTING INDUSTRY OF THE UNITED STATES AND CANADA, LOCAL NO.
170

("Plumbers 170")

-and-

INTERNATIONAL ASSOCIATION OF HEAT AND FROST INSULATORS AND
ASBESTOS WORKERS, LOCAL NO. 118

("Heat and Frost 118")

-and-

OPERATIVE PLASTERERS' AND CEMENT MASONS' INTERNATIONAL
ASSOCIATION OF THE UNITED STATES AND CANADA, LOCAL NO. 919

("Cement Masons' 919")

-and-

INTERNATIONAL UNION OF PAINTERS AND ALLIED TRADES, LOCAL NO. 138

("Painters 138")

-and-

LOCAL 213 OF THE INTERNATIONAL BROTHERHOOD OF ELECTRICAL
WORKERS

("IBEW")

PANEL: Brent Mullin, Chair
Philip Topalian, Vice-Chair
Ritu Mahil, Vice-Chair

APPEARANCES: Chris Leenheer, for the Employer
Bruce Laughton, Q.C., for CMAW
Arnold Berry, for Carpenters Local 1995
Derrill Thompson, for the VSB Council,
Sheet Metal 280, Cement Masons' 919
and Bricklayers
Brett Matthews, for IBEW

CASE NO.: 59011

DATE OF DECISION: March 26, 2009

DECISION OF THE BOARD

1 CMAW applies under Section 141 of the *Labour Relations Code* (the "Code") for
leave and reconsideration of BCLRB No. B37/2009 (the "Original Decision"). The
Original Decision rejected CMAW's application to substitute itself in place of Carpenters
Local 1995 in the VSB Council.

2 The Original Decision noted the need for a timely answer to the labour relations
dispute in this matter:

There has been disruption and confusion at the workplace because
of this dispute. The parties want an expedited answer.
Accordingly, this decision is brief. However, I have considered all
of the parties' submissions and arguments in reaching my decision
(Original Decision, para.3).

3 The need for a timely answer in this matter continues. For instance, in its
submission to us, the Employer says:

The School District has no substantive arguments to present in
response to this application, however wishes to support the
dismissal of the application. The reasons for this are that the
School District employees who are subject to this "war" between
CMAW and UBCJA are becoming increasingly confused by the
process in terms of who represents them within the School District
Bargaining Council. Certain employees are being told they will not
have jobs, or benefits, if they do not sign with one or the other
union. There are now two Board decisions denying CMAW
bargaining rights over the School District employees. The School
District would therefore like to see this matter at an end in order

that further disruption of its workforce ceases and employees can be provided with accurate information about their representation and their job and benefit security.

The factual assertions in this submission have not been disputed.

4 As a result, like the original panel we are going to render a brief, but timely decision in this matter. We have reviewed and considered all of the parties' submissions in reaching our decision.

5 An application under Section 141 of the Code must meet the Board's established test before leave for reconsideration will be granted. An applicant must demonstrate "a good, arguable case of sufficient merit that it may succeed on one of the established grounds for reconsideration": *Brinco Coal Mining Corporation*, BCLRB No. B74/93 (Leave for Reconsideration of BCLRB No. B6/93), 20 C.L.R.B.R. (2d) 44. The application must raise a serious question as to the correctness of the original decision.

6 Having reviewed this matter, we agree with the reasons and disposition in the Original Decision. We add the following.

7 The core issue in the present matter is the interpretation of the agreement between CMAW, the UBCJA, and BCPC referenced in paragraph 2 of the Original Decision (the "Agreement"). That Agreement was reached with the assistance of the Associate Chair of the Labour Relations Board (the "Board"). The Original Decision references the background facts in respect to the Agreement and then proceeds to set out at length the material terms of the Agreement at paragraphs 4 through 6 of the Original Decision.

8 The key issue before the original panel was whether the bargaining unit applied for was a craft unit as contemplated by the Agreement.

9 The Agreement prohibits both unions from raiding each other on a craft basis. 5.02 of the Agreement reads:

5.02 The provisions of this article 5.0 will be exercised in accordance with the following conditions:

- b) There will be no raids of existing craft carpentry bargaining units or of carpentry bargaining units organized following the Date on a craft basis by subordinate bodies of UBCJA or by CMAW. This "no craft raiding" provision will not limit or restrict the ability of the Parties, and/or their respective subordinate bodies, to supplant carpentry craft units on another basis such as all employee or wall to wall;

10 The Agreement does not expressly define what constitutes a "craft raid" for the purposes of the Agreement. Craft representation may exist in several forms, e.g., in a polyparty certification or a council of unions (and the VSB Council is one or the other), the bargaining unit is the overall group of crafts or other constituent members. At times

the craft or other constituent members have been referred to as sub-units. However, there is no doubt that for craft members, as is the case in respect to the craft of carpentry in the present matter regarding the VSB Council, the employees within that craft sub-unit are being represented on a craft basis.

11 The second sentence in 5.02 (b) tends, on balance, to support the conclusion in the Original Decision. The ability to “supplant” is described in terms of “all employee or wall to wall” units. There is no doubt that CMAW’s application in the present matter does not fall within those terms as they are commonly understood in B.C. labour relations. Notwithstanding the fact the certification is held by the VSB Council, carpenters have been and would continue to be represented exclusively as carpenters. In labour relations terms, CMAW is seeking to represent employees within the VSB Council essentially on a craft basis, which is at the opposite end of the spectrum from the “all employee or wall to wall” examples given in 5.02 (b).

12 We find it appropriate that the Original Decision addressed this matter both “in practical, common sense terms” and from a purposive perspective in respect to the nature and terms of the Agreement: Original Decision, paras. 10 and 11, respectively. The result is that the competing carpentry unions can supplant each other on a non-craft basis, but not “raid” on a craft basis. As in the Original Decision, we find that makes most sense of the terms of the Agreement, their intent, and purpose.

13 As well, given the imperative concern in respect to industrial instability inherently arising from the two craft union nature of the Agreement, we believe the issue should be resolved consistent with that concern by lessening the opportunity for or likelihood of industrial instability created by a rivalry vis-a-vis the representation of carpenters on a craft basis.

14 We also find that approach and interpretation is supported in fact by the background and context as set out by CMAW in paragraphs 9 through 21 of its application for reconsideration. Those paragraphs stress the unique nature of what has been allowed under the Agreement, namely to have two unions representing the single craft of carpentry within the province. As noted in what CMAW has set out, the reason that is unique is because the Board has previously not allowed that for industrial stability reasons. The current arrangement in respect to the craft of carpentry under the Agreement thus most acutely raises this industrial stability concern. While the Agreement allows for the anomalous circumstance of two unions representing the single craft of carpentry in the province on a craft basis, it clearly recognizes the critical need to limit the competition between the competing unions and thus the potential for industrial instability. It allows for competition between the unions, but only on the non-craft basis of all employee or wall to wall units. As a result, the potential for industrial instability resulting from competing on a craft basis should be eliminated.

15 Thus, we do not agree with CMAW when in paragraph 26 of its application it says that it is only seeking the rights that other craft unions have under the Code. That is not correct. Other craft unions do not have the basic arrangement of two unions representing a single craft in the province such as we find in the Agreement. The two

carpentry craft unions are thus in a anomalous situation and the question is not what rights other craft unions have under the Code, but rather what has been allowed for under the special circumstances tolerated in the Agreement. As we have just stated, that addresses the overriding concern for industrial stability in the circumstances.

16 We thus also disagree with the submission in paragraph 27 (iii) of CMAW's application that the industrial stability which could flow from what they are submitting is simply a result of the operation of the Code. That is not correct. It would be as a result of the operation of the anomalous circumstances in the Agreement, not the Code. We also know that sort of industrial instability has arisen manifestly in the present circumstances (see the references to paragraph 3 of the Original Decision and the Employer's reconsideration submission, above).

17 We again do not agree with CMAW when it submits that what it is saying is consistent with the intention of the parties in the Agreement. That intention was to allow for the two unions to represent the craft of carpentry, but not provide for circumstances which so clearly in the past have given rise to industrial instability and thus ultimately the need for one union to represent a craft of employees in the province, as CMAW itself has submitted (see above, referencing paragraphs 9 through 21 of CMAW's application). Given its oversight role in respect to the Agreement, clearly the Board would not allow for the kind of industrial instability which CMAW is advocating in this application: see para. 30 of the application.

18 In light of the above, we find that the present reconsideration application has not raised a serious question as to the correctness of the Original Decision. As a consequence, leave is denied and the application for reconsideration is dismissed.

LABOUR RELATIONS BOARD

"BRENT MULLIN"

BRENT MULLIN
CHAIR

"PHILIP TOPALIAN"

PHILIP TOPALIAN
VICE-CHAIR

"RITU MAHIL"

RITU MAHIL
VICE-CHAIR