

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 CRAFTWORKERS 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: Lisa Southern, Vice-Chair and Registrar

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.: 58964

DATE OF HEARING: February 18, 2009

DATE OF DECISION: February 18, 2009

DECISION OF THE BOARD

I. **NATURE OF APPLICATION**

1 On February 12, 2009, CMAW brought an application under Sections 41 and 142 of the *Labour Relations Code* (the "Code") for a variance of the certification dated October 11, 2001 for a unit of employees represented by the VSB Council on behalf of its constituent members. They asked the Board to delete "the United Brotherhood of Carpenters and Joiners of America, Local No. 1995" and substitute "CMAW".

2 The VSB Council, and various constituent members of the VSB Council, oppose the application. They raised a number of objections to the application. One objection they raised is that the application is contrary to the terms of an agreement made between CMAW and the United Brotherhood of Carpenters and Joiners of America ("UBCJA") and the British Columbia Provincial Council of Carpenters ("BCPC") (the "Agreement"). The Agreement was endorsed by the Board in BCLRB No. B277/2007. In B277/2007 the Parties were directed to comply with the terms of the Agreement. The VSB Council and various of its constituent members argue that this application must be dismissed as it is in breach of that direction.

3 The parties had the opportunity to make oral submissions on this preliminary issue. 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.

II. BACKGROUND FACTS

4 Many of the background facts to this matter are set out in a case involving this same Employer, BCLRB No. B77/2008, and in BCLRB No. B277/2008. Stated in the most simple terms, the dispute between UBCJA, BCPC and CMAW (collectively, the "Carpenters") is one about who gets to represent the craft of carpentry in British Columbia. That dispute produced years of litigation. In 2005 the Board encouraged the Carpenters to resolve their disputes through mediation and offered the Board's assistance. The parties accepted that invitation and have been engaged in ongoing mediation with the Board's Associate Chair of Adjudication since that time. In December 2007, the Board endorsed the Agreement that resolved many of the issues between UBCJA, BCPC and CMAW. They continued to be unable to resolve all matters though. For example, the Board had to address which party, if any, maintained the use of the Carpenters' hammer and circle symbol.

5 Material terms of the Agreement are:

2.0 Division of Assets and Liabilities

2.02 The term Assets, as used in this Agreement, includes any and all funds (monies in Bank accounts) real property, personal property, shares and bonds but excludes:

(c) bargaining rights held in the name of BCPC or the Appendix A Bodies as at July 1, 2007 ("Bargaining Rights") unless such bargaining rights were transferred before the Date, or are transferred after the Date, by decision of the Board made following a hearing and provided that such decision is not set aside as a result of reconsideration by the Board and/or judicial review by the Courts.

2.04 UBCJA reserves the right, in its own name or through the BCPC or any other subordinate body, to oppose or challenge the transfer of any Bargaining Rights other than certain bargaining rights held through polyparty certifications by Locals 506 and 1995 for which applications have been made for transfer to CMAW by the Date. However, those polyparty bargaining rights will remain with the named subordinate body of the UBCJA until and unless a final determination is made by the Board or the Courts under existing applications to transfer those bargaining rights to CMAW. This agreement does not limit or restrict in any way the ability of other subordinate bodies of the UBCJA to oppose such transfers or the right of UBCJA, and/or its subordinate bodies, to contest or oppose the transfer of polyparty bargaining rights concerning Columbia Hydro Constructors to CMAW.

5.0 Sharing of Craft Rights Between CMAW and UBCJA Subordinate Bodies

- 5.01 The Parties agree that they, together with their respective subordinate bodies, will share recognition as trade unions pertaining to the craft of carpentry in British Columbia, so as to be entitled to hold carpentry craft bargaining rights, subject to the approval of the Board which the parties request by signing this Agreement.
- 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;

9.0 Miscellaneous

- 9.01 Immediately upon the signing of this Agreement, the Parties will jointly apply to the Board under Sections 139 and 143 of the Labour Relations Code seeking the Board's approval of the terms of this Agreement, its direction that those terms be implemented and a declaration that the Agreement is consistent with the provisions of the Code and the principles expressed or implied in the Code.

6 As stated above, the Board accepted the Agreement. In BCLRB No. B277/2007, the Board stated:

- 23 In this case the parties, to their credit, recognized that the ongoing litigation and associated rivalry between them was a significant impediment to their ability to properly meet the real challenges facing them.
- 24 The parties have focused considerable time, energy and resources in finding a viable resolution to their differences and deserve a great deal of credit in that regard. Their approach has been consistent with Code objectives, particularly Section 2. I would also add that, in my view, this resolution would not likely have been possible without the professionalism, diligence and innovative approaches of counsel for both parties.
- 25 Several matters in the Agreement require further discussions between the parties. However, in order to achieve finality, the parties have agreed that, in the event they are unable to fully resolve those matters, I will provide a final and binding solution.

- 26 *The fact the parties have chosen to enter into the Agreement, the terms of which directly address the Board's concerns with respect to rivalry and potential instability flowing from that rivalry articulated particularly in Access Rigging and to a lesser degree in Zero Downtime, is a key consideration in this matter.*
- 27 Under all the circumstances, I am satisfied the terms of the Agreement are not inconsistent with Code principles and the parties are directed to comply with the terms of their Agreement, a copy of which is attached to this decision.
- 28 I will retain jurisdiction to deal with any issue arising relating to the interpretation or application of the Agreement.
- 29 I would hope that having reached the Agreement, the parties can move to put much of the past rivalry and discord behind them, focus on their respective success and growth and at least be open to examining areas of common interest. (emphasis added)

7 The key dispute is whether the language of the Agreement covers the situation in this case. The VSB Council and its constituents say it does. They say that this is a raid of a craft that as of July 1, 2007 was the "property" of BCPC. They say that CMAW's application, brought under s. 142 goes against the language, the spirit and the intent of the Agreement.

8 CMAW says that this situation is not covered by the Agreement. They say their application is not a raid, as it is brought under Section 142. They say there is no "craft bargaining unit" given that the VSB Council was formed under Section 41 and is a council of trade unions. They say the Agreement did not deal with poly-party bargaining units or bargaining units that are councils through the application of Section 41.

III. ANALYSIS AND DECISION

9 The approach that CMAW urges me to take to the interpretation of the Agreement is a technical one. However, taking an overly technical approach to the interpretation of the Agreement would be contrary to the parties' and Board's collaborative process that was developed through years of mediation to address their unique dispute and to my duties under the Code. The Board is to deal with labour relations issues using a "pragmatic and practical approach reflecting the existing labour relations realities", *Sodexo MS Canada Limited*, BCLRB No. B67/2004 (Leave for Reconsideration of BCLRB No. B23/2004). I have used such an approach in this case in interpreting the Agreement.

10 CMAW's application is brought as a Section 142 application, rather than under Section 19, and I agree with CMAW that technically speaking the bargaining agent for VSB is the VSB Council and there is no "craft bargaining unit" at VSB. However, in

practical, common sense terms, what CMAW is trying to do is displace Local 1995 from representing the craft of carpentry at VSB. Regardless of how the application is framed, and of the fact that the VSB Council is the bargaining agent on the certification, in common sense terms what CMAW is seeking to do is raid the existing craft of carpentry component at VSB. CMAW cannot do this under the terms of the Agreement as the rights BCPC has to this group at VSB were not transferred to CMAW prior to July 1, 2007.

11 To find otherwise would create a situation where the Board endorsed an agreement that left open for future competition between the factions of Carpenters the right to represent carpenters in the Allied Hydro Council, at Simon Fraser University, VSB, Vancouver Shipyards and Vancouver Drydocks. That result runs directly contrary to the comments of the Associate Chair in BCLRB No. B277/2007 when he accepted the terms of the Agreement on the basis that the "terms . . . directly address the Board's concerns with respect to rivalry and potential instability flowing from that rivalry".

12 I have reached this conclusion without the necessity of relying on a letter dated November 24, 2008 from Associate Chair Fleming. However, I note that his letter is supportive of this conclusion. In it, he references the "carpenter craft bargaining rights" that exist at VSB, and says that they remain with BCPC. He references Article 5.02(b) of the Agreement that prohibits raids and concludes "I expect both parties will conduct themselves in accordance with the provisions of the Agreement generally and, in particular, with respect to Vancouver School Board and Simon Fraser University".

13 In conclusion, I find that the application is contrary to the terms of the Agreement and that if CMAW persists in its application, it will be in violation of BCLRB No. B277/2007. Accordingly, I dismiss CMAW's application on the basis that the matter is settled on the terms of the Agreement and the direction in BCLRB No. B277/2007.

14 I note that other issues have arisen that are related to this matter, including a complaint under Section 10 of the Code and a Section 6 and 9 complaint. I also note that under Article 7.0 of the Agreement the Board must, if the Associate Chair is unavailable, appoint another individual to adjudicate any dispute or otherwise fulfil any function given to the Associate Chair under the Agreement. Given the Associate Chair's current unavailability, I will adjudicate the current applications before the Board related to VSB. A case management meeting/informal will be set on these matters for a day next week.

LABOUR RELATIONS BOARD

"LISA SOUTHERN"

LISA SOUTHERN
VICE-CHAIR AND REGISTRAR

