

BRITISH COLUMBIA LABOUR RELATIONS BOARD

LIMO JET GOLD EXPRESS LTD.

(the "Employer")

-and-

PUBLIC SERVICE ALLIANCE OF CANADA

("PSAC")

PANEL: Ken Saunders, Vice-Chair

APPEARANCES: Murray Tevlin and John Chesko, for the
Employer
Chris Buchanan and John MacTavish, for
PSAC

CASE NO.: 55831

DATE OF DECISION: June 4, 2007

DECISION OF THE BOARD

I. INTRODUCTION

1 PSAC applies under Section 99 of the *Labour Relations Code* (the "Code") for
2 review of an arbitration award dated December 20, 2006, Ministry No. X-037/06 (the
3 "Award") issued by Arbitrator Dalton L. Larson (the "Arbitrator").

4 The Award concerns a grievance filed by the Employer under a collective
5 agreement between the Public Service Alliance of Canada, Local 05/21081 (the "Local
6 Union") and the Employer (the "Collective Agreement"). The grievance seeks damages
7 for an alleged unlawful strike.

8 The Employer sought to add PSAC as a party to that proceeding. PSAC
9 opposed that application. Among other things, PSAC argued that it cannot be a party to
10 the Collective Agreement because it is not a "trade union" within the meaning of the
Code.

The Arbitrator ruled that PSAC has the status to become a party to the Collective
Agreement. The Arbitrator then concluded that PSAC in fact became a party to that
Collective Agreement. PSAC was added as a party on that basis: Award, p. 35.

PSAC advances three grounds for review. It is only necessary to address the
first ground to decide the application.

PSAC says the Award is inconsistent with the following Code principles: 1)
Section 1 defines a "trade union" as "a local or Provincial organization or association of
employees, or a local or Provincial branch of a national or international organization or
association of employees in British Columbia"; and 2) that only an employer and a union
can be parties to a collective agreement. The Union argues those principles are
expressed or implied in a number of Code provisions, including Sections 48, 84(3)(b),
85, 86, 87, 88, and 90.

Among other things, PSAC asks the Board to set aside the Award and to
substitute a decision dismissing the Employer's application to add PSAC as a party.

II. THE ARBITRATION AWARD

The Award covers extensive terrain. I will not recount the Arbitrator's entire
analysis. Rather, this heading is focused on key findings that lead to the decision at
issue.

I begin with some factual background.

PSAC is a National Union.

11 The Board certified the Professional Associated Limousine Services Association ("PALSA") as the exclusive bargaining agent for a unit of employees employed by the Employer. PALSA and PSAC Local 05/21081 then merged. Consequently, the Board varied the certification to name the Local Union as the certified bargaining agent: Award, pp. 3-4.

12 The respective constitution and bylaws of PSAC and the Local Union give PSAC considerable control over the workings of the Local Union: Award, pp. 10-12.

13 The Local Union and PSAC entered into a "Service Agreement". Among other things, the Arbitrator found that the Service Agreement requires that PSAC do the following things:

...coordinate and conduct collective bargaining for all directly chartered locals and be a signatory to all collective agreements entered into between the local and an employer in where a certificate of bargaining authority has been issued to the local; it is given the responsibility of representing members at arbitration or adjudication "in accordance with its duty of fair representation under any applicable labour relations statute..." (Award, p. 12)

14 I will now summarize PSAC's position before the Arbitrator and the Arbitrator's response.

15 As noted above, PSAC argued before the Arbitrator that it could not be a party because "...it is not a trade union by definition and a collective agreement must be between a trade union and an employer": Award, p. 25.

16 The Arbitrator responded to that argument as follows.

17 The Arbitrator acknowledged that he only has jurisdiction over parties to the Collective Agreement: Award, pp. 23-24. The Arbitrator also acknowledged that the Code defines a "collective agreement" as an agreement between a "trade union" and an "employer".

18 The Arbitrator posited that it is possible for a third party, like an insurance company (who does not fit the Code definition of an employer or a trade union), to become a party to a collective agreement between a trade union and an employer. Further, a dispute about that third party's rights and obligations arising under the Collective Agreement is subject to arbitration: Award, pp. 24-25. Having established those propositions, the Arbitrator reasoned that the third party in the present case is PSAC, and that the central issue is whether "PSAC is a party to the collective agreement that it negotiated": Award, p. 25.

19 The Arbitrator concluded that PSAC is an independent legal entity under the Code. This flows from the definition of trade union, which contemplates the existence of national or international organizations or associations of employees. The Arbitrator reasoned that the only condition for a national or international organization of

employees to operate under the Code is to establish a local or provincial branch that meets the criteria to be given trade union status. Once that is done, a national organization acquires an important role over the "...entire scope of normal union functions..." including "...collective bargaining and all of its appurtenant functions": Award, p. 31. The Arbitrator added that a national organization or association may organize its relationship with a local so it participates in the affairs of the local, even to the point of controlling the local's activities: Award, pp. 31-32.

20 Further, while PSAC and the Local Union are separate entities for purposes unrelated to the Code, the Arbitrator concluded that PSAC acquired "dependent status" when it established the Local Union to participate in collective bargaining: Award, p. 33. The Arbitrator did not expressly conclude that this "dependent status" means trade union status. I note parenthetically that on the Arbitrator's analysis, it is unnecessary that a third party be a trade union or an employer to become a party to the collective agreement.

21 The Arbitrator concluded that PSAC became a party to the Collective Agreement in the facts before him. His reasoning is as follows:

That means that the PSAC has a legal status separate and apart from the Local Union and that in the ordinary course of events an arbitrator would not have jurisdiction to join it as a party to an arbitration under the collective [agreement] except that, in the rather unique circumstances of this case, the PSAC has voluntarily subscribed to the collective agreement and made itself a party to it. It is the outcome of the relationship established by the constitutional documents, which require that the PSAC shall coordinate and conduct collective bargaining for all Directly Chartered Locals and be a signatory to all collective agreements entered into between the local and an employer. In addition, the PSAC has undertaken a contractual obligation to represent members of the local at all arbitrations or adjudications consistent with its duty of fair representation, all of which amounts to an assumption of the rights and obligations of the agreement by the PSAC, which was endorsed by both the Employer and the Local Union when they each accepted the agreement. While the collective agreement is expressed to be between Limo Jet Gold Express Ltd. as the Employer, and the Public Service Alliance of Canada, Local 05/21081, as the Union, the execution page sets out only the name of the Employer with two spaces for authorized signatories and the name of the PSAC with spaces for six authorized signatories.

It is true that the evidence was that the current agreement has never been signed by any of the parties. However, it is binding as an equitable agreement, if not in law, because all of the parties communicated their acceptance of it to the others. ...

During the entire history of collective bargaining between these parties, staff persons employed by the PSAC have acted as chief spokesperson in each set of negotiations. ... There is also evidence in the earlier part of the negotiations, a representative of the Local Union, Harry Managat engaged directly in collective bargaining with Mike Olak representing the Employer and reached a tentative settlement in the absence of any PSAC representatives. When the PSAC found out about the negotiations both Msrs. Guevremont and Little [PSAC representatives] advised the Employer that they were the only authorized negotiators for the bargaining unit employees and that only the PSAC had the authority to settle the collective agreement. They even threatened to file a bargaining in bad faith complaint with the Labour Relations Board but withdrew the threat when the Employer agreed to rescind the tentative settlement and resumed collective bargaining with the PSAC representatives. (Award, p. 34)

III. ANALYSIS AND DECISION

A. Preliminary Objections

22 The Employer argues the Board should not decide this application because the Award only deals with a preliminary issue and may be moot once the grievance is decided. The Employer also contends that the Union's application is premature because it will be shown that PSAC condoned and participated in the alleged strike.

23 The Board's policy is not to review preliminary arbitration awards under Section 99. This policy is intended to promote expedition in arbitration proceedings and avoid litigation over issues that may be moot after a final disposition: *Fording Coal Limited*, Letter Decision BCLRB No. B361/96; *Blair Franko*, BCLRB No. B348/2001. Exceptions include applications that raise a jurisdictional or fair hearing issue.

24 PSAC argues that its application should be decided now because it concerns a jurisdictional determination and a denial of a fair hearing. The Employer replies that if the application raises a jurisdictional issue, that the Board should exercise its discretion not to hear the application until the Arbitrator issues a final decision: *Construction Labour Relations Association of B.C.*, BCLRB No. B37/2004.

25 I conclude that it is appropriate to review the Award for the following reasons.

26 PSAC's application raises a jurisdictional issue: did the Arbitrator correctly assert jurisdiction over PSAC as a party to the Collective Agreement? Jurisdictional determinations fall under a recognized exception to the Board's policy against reviewing preliminary awards.

27 The Employer correctly observes that the Board retains the discretion not to review preliminary awards involving jurisdictional determinations. However, that response is typically reserved for cases where the jurisdictional determination is

contingent on other findings or the application is viewed to be premature on other grounds: *Construction Labour Relations Association of B.C., supra*. That is not the situation in the case at hand. Here the Award pronounces a final and conclusive determination that PSAC is a party to the Collective Agreement. That ruling is the foundation for asserting jurisdiction over PSAC and turns on important matters of statutory concern. Thus, the application raises a live controversy, the resolution of which will have a practical effect on the rights of the parties under the Code.

28 The Employer says the Award should not be reviewed for an additional reason. It asserts that PSAC may be responsible for the debts of the Local Union under the law of insolvency and "other law". This submission is not extensively developed or accompanied by particulars. The Employer's central point is that PSAC's liability to the Employer may not be resolved by arbitration, regardless of the outcome of PSAC's Section 99 application. Hence there is no point in the Board proceeding.

29 I find that the Employer's submission does not respond to the issue at hand. Regardless of the merits of the Employer's claims, a live issue remains under the Code: did the Arbitrator correctly assert jurisdiction over PSAC in a dispute arising under the Collective Agreement? It is one thing to say that PSAC is responsible under insolvency law or common law principles to pay the Local Union's debts, including liability incurred by the Local Union under the Collective Agreement. That is a matter for a Court to decide. It is an entirely different proposition to say that PSAC can itself be liable to the Employer as a party to the Collective Agreement. The resolution of that question turns on considerations of law and policy under the Code and falls under the Board's jurisdiction.

30 The Employer also argues that the Board should decline to review the Award because Counsel for PSAC is in a conflict of interest with his client, the Local Union. The Employer says there is a conflict because counsel for PSAC is attempting to argue that the Local Union is liable for a breach of the Collective Agreement and that counsel for PSAC has access to confidential information that is prejudicial to the interests of the Local Union. Moreover, the Employer argues that PSAC is acting contrary to fiduciary obligations owed to the Local Union under the Service Agreement.

31 I accept PSAC's submission that the Employer has not shown why it should be given standing in this proceeding, to assert the rights of other parties in an attempt to stop the Union's application for review. That is a full answer. But there is another fundamental problem. The Board's duty is to promote the orderly, constructive and expeditious resolution of disputes under its jurisdiction: Section 2(e). The Employer has not demonstrated, either on the language of the Code or as a matter of good labour relations policy, why these issues should distract the Board from exercising its jurisdiction in the circumstances of this case. Nor am I persuaded that the Board is the appropriate forum to decide issues regarding professional responsibility or fiduciary duties. To reiterate, Section 99 gives the Board jurisdiction to review arbitration awards. The last category of objections relate to matters squarely within the purview of the Law Society or the jurisdiction of a Court. For all these reasons, I am not satisfied that it is necessary or desirable for the Board to suspend its review until these issues are

resolved. I have reached this conclusion assuming for present purposes, that the facts asserted by the Employer are true.

32 Lastly, the Employer objected to PSAC's reliance on statutory declarations attached to its submissions. It is unnecessary to resolve this issue because this decision is based on facts disclosed on the face of the Award.

33 For all these reasons, the Employer's preliminary objections are dismissed.

IV. ANALYSIS AND DECISION

A. Standard of Review

34 The Arbitrator's decision to add PSAC as a party hinges on a determination that PSAC became a party to the Collective Agreement between the Employer and the Local Union. The question of whether PSAC can be a party to the Collective Agreement involves the definition of a "trade union" and a "collective agreement", among other provisions of the Code. The Board reviews an arbitrator's interpretation of the Code under Section 99 on a standard of correctness: *British Columbia Hydro and Power Authority*, BCLRB No. 289/84, 7 CLRBR (NS) 45. I will review the Award on that basis.

B. The Issues

35 One issue is whether the Arbitrator erred in concluding that a person other than a trade union or an employer can be a party to a collective agreement.

36 Another issue is whether the Arbitrator erred in concluding that PSAC is a trade union within the meaning of the Code. PSAC asserts that the Arbitrator arrived at this conclusion. The Employer does not contest that assertion. I read the Award differently. I find the Arbitrator stopped short of expressing that conclusion. Instead the Arbitrator referred to "dependent status".

37 In my view, nothing ultimately turns on which of those readings is correct. I say that because the Award is inconsistent with Code principles, regardless of whether the Arbitrator found that PSAC is a trade union. That conclusion is explained in the analysis below.

38 PSAC asserts that it is a National Union; that the Legislature chose to remove National Unions from the definition of trade union and that when the Legislature chose to refer to "national or international organizations" or "national or international trade unions" it used those precise words, as opposed to the words "trade union". This submission relies on the language of Code provisions and legislative history found in the predecessor to the Code under the *Industrial Conciliation and Arbitration Act*, S.B.C. 1947, c. 44 and the *Industrial Conciliation and Arbitration Act*, R.S.B.C. 1948, c. 155, see: *Corcoat Engineering Ltd.*, BCLRB No. 115/74. For example, PSAC submits that the Section 1 definition of "trade union" is carefully drafted to refer to "a local or Provincial branch of a national or international organizations of employees". The words

"national or international trade union", are only used under Section 150 in the context of trusteeship.

39 The Employer submits that the Arbitrator's conclusion rests on unique circumstances and that the Arbitrator correctly concluded that the Code contemplates National Unions. The Employer submits that the Arbitrator's interpretation of the Code "accords with practical and purposive law within the exclusive jurisdiction model mandated by the Supreme Court of Canada in *Weber v. Ontario Hydro*", [1995] 2 S.C.R. 929 ("*Weber*").

40 The Union replies that the Arbitrator did not rely on the Supreme Court's decision in *Weber* and that the Board has concluded that this decision does not expand arbitration proceedings beyond an employer and a union: *Canada Safeway Limited*, BCLRB No. B263/98, 44 CLRBR (2d) 121.

41 The following analysis is based on three main points.

42 First, the Arbitrator held that it is possible for a third party like PSAC, to become a party to the collective agreement between the Employer and the Local Union. The Arbitrator held "in the ordinary course of events an arbitrator would not have jurisdiction to join it [PSAC] as a party to an arbitration under the collective [agreement] except that, in the rather unique circumstances of this case, the PSAC has voluntarily subscribed to the collective agreement and made itself a party to it": Award, p. 34. On the Arbitrator's analysis, any legal actor is free to become a party to a collective agreement, subject to the parties' mutual agreement. This might appear to be a small exception to the presumptive state of affairs but on closer analysis, I find it represents a marked departure from the legislative scheme that governs parties to a collective agreement.

43 I will elaborate on the tripartite model underpinning the legislative scheme to show why that conclusion is inconsistent with the law and policy of the Code. In summary, the participants in a collective bargaining relationship established under the Code are a trade union acting as the employees' exclusive bargaining agent and an employer. That model is intended to bring parties to a collective agreement and their conduct in an ongoing collective bargaining relationship, under the jurisdiction of the Code (i.e. unfair labour practices, collective bargaining, strikes/lockouts, last offer votes, mediation, etc.).

44 Viewed from this standpoint, a collective agreement is just one part of a collective bargaining relationship established under the Code. A collective agreement governs the employment relationship between an employer and a group of its employees defined as a bargaining unit. The trade union's role is to act as the employees' exclusive bargaining agent. The basic point is that the Code leaves no place for additional parties under a collective agreement in respect of a single unit, regardless of whether that additional party is another "trade union".

45 Second, the Arbitrator held that PSAC has legal status under the Code. This "dependent status" was acquired when PSAC parented the Local Union. On that basis,

the Arbitrator reasoned that PSAC has the status to become a party to the Collective Agreement.

46 The Code gives national organizations the right to act under a collective agreement as a local union's trustee, but only under the Board's supervision and on a temporary basis. National organizations, like PSAC, may have status as legal entities under the Code but they are denied trade union status. This excludes them from the legislative scheme governing participants in a collective bargaining relationship. It follows that PSAC cannot obtain certification and cannot be a party to a collective agreement under the Code. Therefore, the Arbitrator erred in concluding that PSAC has the status to become a party to the Collective Agreement.

47 I add that a local or provincial branch of a national organization must be a viable collective bargaining agent standing on its own. Apart from that requirement, it must maintain a "local character" to obtain and keep trade union status. A trade union does not retain its local character if it is controlled by a national organization.

48 Third, the Arbitrator held that, "...the PSAC has voluntarily subscribed to the collective agreement and made itself a party to it. It is the outcome of the relationship established by the constitutional documents, which require that the PSAC shall coordinate and conduct collective bargaining for all Directly Chartered Locals and be a signatory to all collective agreements entered into between the local and an employer. In addition, the PSAC has undertaken a contractual obligation to represent members of the local at all arbitrations or adjudications consistent with its duty of fair representation, all of which amounts to an assumption of the rights and obligations of the agreement by the PSAC, which was endorsed by both the Employer and the Local Union when they each accepted the agreement": Award, p. 34.

49 I am not persuaded by the Arbitrator's statement that this finding is a pure question of fact. As PSAC points out, this conclusion collides with the tripartite model that underpins the statutory scheme.

50 The Code provides a comprehensive set of rules for the acquisition and transfer of bargaining rights, as well as the acquisition of trade union status under an established collective bargaining relationship (Section 37). Thus a certified trade union does not have an unfettered right to give its status as a bargaining agent or its duty of fair representation to just any other entity. These rules work in furtherance of the tripartite model by ensuring that only a trade union acts as the employees' exclusive bargaining agent with an employer. These provisions also provide the Board with jurisdiction to supervise the transfer of collective bargaining rights and trade union status in accordance with Section 2 duties: mostly notably, the Section 2(c) duty to ensure that a majority of employees endorse such arrangements. The facts set out by the Arbitrator show that PSAC did not follow the required rules to acquire trade union status and become a party to the Collective Agreement.

C. The Legislative Scheme

51 A fundamental premise of the Code is to advance employees' right to participate in the lawful affairs of their trade union and provide employees with access to collective bargaining with their employer. The purpose of the legislative scheme and the tripartite model is expressed in Sections 2 and 4(1) as follows:

2. The board and other persons who exercise powers and perform duties under this Code must exercise the powers and perform the duties in a manner that
 - (a) recognizes the rights and obligations of employees, employers and trade unions under this Code,
 - (b) fosters the employment of workers in economically viable businesses,
 - (c) encourages the practice and procedures of collective bargaining between employers and trade unions as the freely chosen representatives of employees,
 - (d) encourages cooperative participation between employers and trade unions in resolving workplace issues, adapting to changes in the economy, developing workforce skills and developing a workforce and a workplace that promotes productivity,
 - (e) promotes conditions favourable to the orderly, constructive and expeditious settlement of disputes,

4. (1) Every employee is free to be a member of a trade union and to participate in its lawful activities.

52 The Code provides a comprehensive scheme for labour relations in the Province to achieve these ends. Key aspects include the acquisition and termination of bargaining rights; unfair labour practices; the regulation of collective bargaining, (i.e., strikes, lockouts, picketing) and the arbitration of disputes arising under a collective agreement. As noted above, a collective agreement is just one part of the regime that governs parties in a collective bargaining relationship under the Code.

53 The comprehensive nature of this regime flows from provisions that bring employees, the employees' trade union and an employer, under the Code. For instance, access to collective bargaining is restricted to employees. Bargaining rights are only given to trade unions acting as the employees' exclusive bargaining agent with respect to an employer's business. The Code also stipulates that a collective agreement is an agreement between an employer and a trade union.

54 The Code defines each of the three actors in exhaustive terms. Where the Legislature intended to extend the Code's reach beyond employees, trade unions and

employers it used the word "person" (e.g. Sections 5 and 9) or even more specific terms like "national or international trade union" (e.g. Section 150). Unlike the words "trade union", "employer" and "employee" the word "person" is given a non-exhaustive definition. A person is defined as follows:

"person" includes an employee, an employer, an employers' organization, a trade union and council of trade unions, but does not include a person in respect of whom collective bargaining is regulated by the Canada Labour Code;

55 The words "collective agreement" and "dispute" are also given exhaustive definitions. Section 1 provides:

"collective agreement" means a written agreement between an employer, or an employers' organization authorized by the employer, and a trade union, providing for rates of pay, hours of work or other conditions of employment, which may include compensation to a dependent contractor for furnishing his or her own tools, vehicles, equipment, machinery, material or any other thing;

"dispute" means a difference or apprehended difference between an employer or group of employers, and one or more of his or her or their employees or a trade union, as to matters or things affecting or relating to terms or conditions of employment or work done or to be done;

"trade union" means a local or Provincial organization or association of employees, or a local or Provincial branch of a national or international organization or association of employees in British Columbia, that has as one of its purposes the regulation in British Columbia of relations between employers and employees through collective bargaining, and includes an association or council of trade unions, but not an organization or association of employees that is dominated or influenced by an employer;

56 Therefore, when the Code refers to employees, a trade union or an employer, it means those actors exclusively.

57 The tripartite model is also found under Section 48. That provision identifies the parties bound by a collective agreement as follows:

48. A collective agreement is binding on

- (a) a trade union that has entered into it or on whose behalf a council of trade unions has entered into it, and every employee of an employer who has entered into it and who is included in or affected by the agreement, and

- (b) an employer who has entered into it and on whose behalf an employers' organization authorized by that employer has entered into it.

58 Reading the foregoing provisions together, it is evident that the Code exclusively reserves a collective bargaining relationship and a collective agreement for persons with employee, trade union or employer status.

59 The Arbitrator ruled that the issue before him was whether PSAC became a party to the Collective Agreement between the Local Union and the Employer: Award, p. 25. The Arbitrator also ruled that in fact happened: Award, p. 34. I will now address the question of whether PSAC is entitled to enter the collective bargaining relationship established between the Local Union and the Employer.

60 A central characteristic of the Local Union's status in its collective bargaining relationship with the Employer lies in its role as the employees' exclusive bargaining agent: Section 27.

61 When the Local Union was certified, it became the exclusive bargaining agent for employees in the bargaining unit. It also obtained the exclusive right to bind the unit to a collective agreement. Exclusive bargaining agency is pivotal in the legislative scheme because it invokes the duty to bargain in good faith (Section 11) and the duty of fair representation (Section 12).

62 Section 27(1)(a) defines exclusive bargaining agency as follows:

- 27. (1) If a trade union is certified as the bargaining agent for an appropriate bargaining unit,
 - (a) it has exclusive authority to bargain collectively for the unit and to bind it by a collective agreement until the certification is cancelled,

63 I note parenthetically that the Section 1 definition of "bargaining agent" refers to the "trade union certified by the Board as an agent to bargain collectively for an appropriate bargaining unit".

64 The word "exclusive" denotes that only the Local Union can be the representative of employees with the legal capacity to bind the unit by collective agreement. The Local Union is free to engage PSAC to bargain on its behalf but it may not unilaterally transfer its status as the employees' exclusive bargaining agent to just any other entity: *Certain Employees of Stearns Catalytic Ltd.*, BCLRB No. 360/85 (Appeal of No. 112/85). Similarly, it is not open to the Local Union to "contract out" its duty of fair representation by passing that obligation to PSAC. Those rights and obligations can only be acquired or lost under established statutory mechanisms.

65 I will briefly canvass those mechanisms.

66 The Code provides that a trade union may stand in place of another trade union (union successorship) because of an agreement between trade unions to merge, amalgamate or transfer jurisdiction: Section 37. These agreements are not effective in altering a collective bargaining relationship until the Board issues a declaration to that effect. No one argues that PSAC followed this avenue to become a party to the collective agreement between the Local Union and the Employer.

67 Apart from successorship, the Local Union's status as the exclusive bargaining agent can be lost by certification under Section 19(2) (a raid), by variance under Section 142 (as in partial decertification or a representational contest following a successorship) or by cancellation under Section 33. Section 33 provides for cancellation by a representation vote initiated by employees; by abandonment and lastly, if the union ceases to be a trade union. The consequence of cancelling bargaining rights is to end the collective agreement that applies to the unit affected: Section 33(8).

68 The point in reviewing these provisions is that the Local Union remains the employees' exclusive bargaining agent until that status is cancelled under the Code. Put differently, the Local Union and the Employer may not sidestep these statutory mechanisms by agreeing to add PSAC as a party to the Collective Agreement, clothed with the status to conclude a collective agreement for the unit. That outcome is contrary to the principle of exclusive bargaining agency and statutory mechanisms that regulate the transfer of that status. This conclusion follows regardless of whether PSAC is counted as a trade union.

69 It is well established that an arbitrator may not assert jurisdiction over persons who are not parties to a collective agreement: *Hospital Employees' Union v. Children and Women's Health Centre and Co-operators Life Insurance Company*, 75 B.C.L.R. (3rd) 257, 2000 BCCA 170. The issue here is whether the Code allows any one other than a trade union and an employer to enter a collective bargaining relationship and become a party to a collective agreement.

70 Apart from the foregoing provisions, Parts 5 and 8 of the Code also provide an answer. These provisions set out a legislative *quid pro quo*. To summarize, Part 5 prohibits strikes and lockouts during the term of a collective agreement. Part 8 requires that "disputes" arising under a collective agreement be resolved by arbitration. The latter requirement is expressed in Section 82 as follows:

82. (1) It is the purpose of this Part to constitute methods and procedures for determining grievances and resolving disputes under the provisions of a collective agreement without resort to stoppages of work.

(2) An arbitration board, to further the purpose expressed in subsection (1), must have regard to the real substance of the matters in dispute and the respective merit of the positions of the parties to it under the terms of the collective agreement, and must apply principles consistent with the industrial

relations policy of this Code, and is not bound by a strict legal interpretation of the issue in dispute.

71 Section 82(1) confirms that the purpose of Part 8 is to "constitute methods and procedures for resolving *disputes under the provisions of a collective agreement...*" (emphasis added). The word "dispute" is given an exhaustive definition under Section 1 as "a difference or apprehended difference between an employer or group of employers, and one or more of his or her or their employees or a trade union ...". This means that only employees, their trade union, and employers may access collective agreement arbitration as a party to a collective agreement.

72 I will now address PSAC's status under the Code.

73 Section 150 refers to national trade unions. Section 150 reads as follows:

150.(1) A provincial, national or international trade union that assumes supervision or control over a subordinate trade union, whereby the autonomy of the subordinate trade union under the constitution or bylaws of the provincial, national or international trade union is suspended, must, within 60 days after it has assumed supervision or control over the subordinate trade union, file with the board a statement, verified by the statutory declaration of its principal officers, setting out the terms under which supervision or control is to be exercised and it must, on the direction of the board, file such additional information concerning such supervision and control as the chair requires.

(2) If a provincial, national or international trade union has assumed supervision or control over a subordinate trade union, that supervision or control must not continue for more than 12 months from the date of the assumption without the consent of the board.

74 Section 150 contemplates that a national trade union may supervise or control a subordinate local union in limited circumstances—it does not put the National into the shoes of the subordinate trade union.

75 National and international trade unions are denied status as trade unions under the Code. The purpose in doing so is tied to the goal of bringing the parties to a collective bargaining relationship under the Board's jurisdiction: *Corcoat Engineering, supra*. That purpose was described in *Royal Roads University*, BCLRB No. B107/96, 31 CLRBR (2d) 1 ("*Royal Roads*") as follows:

Locals of national or international unions which function in this Province do so as independent trade unions for purposes of the Code. *The policy reason for this requirement is that there must be a trade union presence in the Province which has the capacity to conclude and administer a collective agreement and a collective bargaining relationship under the jurisdiction of this Board.* While

Section 36 is designed by exception to preserve bargaining rights contained in a federally negotiated collective agreement and thus get the provincial relationship underway, it is not designed as a global exception to the provisions of the Code or to avoid the policy rationale underlying the local status requirement. It is one thing to say that a collective agreement from the federal jurisdiction continues to be binding on the provincial recipient employer, it is another for a union to have status to enforce it under the Code. All other sections of the Code require a trade union to be a local organization.

We do not propose to canvass all of the potential difficulties which a failure to acquire trade union status under the Code may bring despite Section 36. Some areas of concern broadly stated relate to contract administration, certification, and renewal of the collective agreement. Can such a union apply to this Board for a remedy under the Code relating to enforcement of the collective agreement? Can such a union enforce the collective agreement under Part 8 of the Code? Can such a union engage in a lawful strike and picketing under the Code? Can it take a strike vote? When it comes to a renewal of the collective agreement, the next collective agreement will be one negotiated within the Province with a provincial employer and must, therefore, meet the definition of "collective agreement" under the Code. Similarly, if the union wishes to apply for certification, it must also satisfy the Board that it is a trade union within the meaning of the Code. (paras. 112-113, emphasis added)

76 The Board's comments in *Royal Roads* apply in the facts of the present case. PSAC is a national organization of employees—it is not a trade union under the Code. Accordingly, it is not governed by the duty to bargain in good faith and other Code provisions that regulate the Employer and the Local Union under their Collective Agreement and their collective bargaining relationship.

77 Did PSAC acquire trade union status when it gave birth to the Local Union?

78 The Board looks to ensure that a local or Provincial branch of a national organization is a viable entity standing on its own before it is given trade union status. As set out in the foregoing excerpt taken from *Royal Roads*, the local operates as an independent union under the Code. The test was succinctly put in *NW Energy (Williams Lake) Corp.*, BCLRB No. B368/2003 ("*NW Energy*") as follows: "can it [the local] do business with employers through collective bargaining and contract administration and can it effectively represent the employees so as to meet its duty of fair representation?": para. 133. If the answer is "no" the organization is not given status as a trade union.

79 Apart from organizational viability, a "local or Provincial branch of a national organization" must be local in character. Again, this ensures that all the parties to a collective agreement lie within the Board's jurisdiction. The "local character" requirement means that the authority to bargain must be vested in the local union as an

entity standing apart from the national organization. In *NW Energy*, the Board explained that the failure to meet that criterion is fatal to the organization's status as trade union:

To meet the local character criterion, the authority to bargain toward and to conclude a binding collective agreement must rest with the local organization: *Corcoat, supra*, p. 535. Lack of local decision-making is fatal if control is exercised by the parent organization outside the province, either by having all decisions about contract negotiations and signing of agreements made at that level or made subject to the approval of the parent body: *Grey Fox Pictures.*, BCLRB No 66/81; (1981) 3 Can LRBR 377; *Ray's Parcel Express Ltd.*, BCLRB No. B196/2002. (para. 175)

80 It follows from these principles that a national organization does not acquire trade union status for itself when it establishes a local or provincial branch. Rather, it breathes life into an entity that is eligible for trade union status standing in its own right.

V. CONCLUSION

81 PSAC has the status of a national organization of employees under Section 1 and as a national trade union within the meaning of Section 150. PSAC also falls under the general definition of a person. However, PSAC does not have trade union status.

82 The Code establishes collective bargaining relationships on the basis of a tripartite model. There is no room for additional parties to subscribe to a collective agreement between an employer and a trade union under that legislative scheme. Only a trade union can be a party to a collective agreement with an employer.

83 Therefore, the Award is set aside and the following decision is substituted: the Employer's application to add PSAC as a party to the arbitration is denied.

LABOUR RELATIONS BOARD

"KEN SAUNDERS"

KEN SAUNDERS
VICE-CHAIR