

**BRITISH COLUMBIA LABOUR RELATIONS BOARD**

A.C.M.C.J. HOLDINGS LTD.  
(HAVEN HILL RETIREMENT CENTRE)

("ACMCJ")

-and-

BURON MANAGEMENT LTD.

("Buron")

-and-

HOSPITAL EMPLOYEES' UNION

(the "Union" or the "HEU")

PANEL: Ken Saunders, Vice-Chair

APPEARANCES: J. Najeeb Hassan, for Buron  
David Tarasoff, for the Union

CASE NOS.: 56297 and 56792

DATE OF HEARING: June 27, 2007

DATE OF DECISION: August 23, 2007

## DECISION OF THE BOARD

### I. INTRODUCTION

1 The Union applies under Section 18 of the *Labour Relations Code* (the "Code") to be the certified bargaining agent for a unit of employees described as follows:

employees of [ACMCJ Holdings Ltd. (Haven Hill Retirement Centre)] (represented by the Health Employers Association of British Columbia) in the health services and support – facilities subsector (as defined in Section 19.1 of the Health Authorities Act) except those employees represented by other trade unions

2 The application names ACMCJ as the employer of the proposed unit. Buron contends that it is the employer. It asks to be named the respondent in place of ACMCJ. The Union's primary reply is that ACMCJ, Buron and Buron Healthcare Ltd., should be declared a common employer under Section 38 of the Code. In the alternative, it says that Buron is the successor to ACMCJ under Section 35 and in the further alternative, that employees were not effectively transferred from ACMCJ to Buron.

3 At stake in this dispute is whether the parties fall under the legislated collective bargaining regime for designated health care employers, set up by the intersection of the *Public Sector Employers Act*, RSBC 1996, c. 384 (the "PSEA") and the *Health Authorities Act*, RSBC 1996, c.180 (the "HAA").

4 I will briefly elaborate. ACMCJ is a designated health care employer and a member of the Health Employers Association of British Columbia ("HEABC"). If ACMCJ is named the respondent and a majority of employees vote in favour of union representation, the parties will bargain under the framework in place for employees under the facilities subsector, as defined by Section 19.1 of the HAA. If Buron is the employer, the Union will bargain with Buron outside of that legislated framework. Buron can then pursue an application to provide non-clinical services at the Haven Hill Centre in a public-private partnership, something it cannot do if it is a health care employer.

5 The Union also filed an unfair labour practice complaint. The parties agreed to hold that application in abeyance, pending the outcome of the Union's applications under Sections 35 and 38.

6 HEABC was given notice of this proceeding. It observed the pre-hearing conference but did not advance a position.

## II. BACKGROUND

7 The facts are not in dispute. Accordingly, I have reproduced parts of the parties' submissions to set out the background.

8 The factual background consists of three parts. First, I will introduce some basic facts about the business, the corporate entities used to run that business, and a brief history of its labour relations. Second, I will set out the facts leading to the incorporation of Buron. Third, I will describe what happened after the Union filed its application.

### A. General Background

9 Employees in the proposed unit work as support staff at the Haven Hill Retirement Home Centre (the "Centre"). The Centre is a long-term care facility.

10 Buron Health Care owns Buron and ACMCJ. There is no dispute that ACMCJ operated the Centre and employed the support staff, at least until May 10, 2007. Kathy Giene is the Vice-President of Operations for Buron Health Care.

11 The Nurses Bargaining Association ("NBA") is certified to represent nurses at the Centre. The HEU was certified as the bargaining agent for support staff at the Centre in 1977.

12 Public sector labour relations underwent a significant restructuring in the 1990's. This was achieved by a process of consultation and legislative reform: James E. Dorsey, Commissioner (June 30, 1995) *Report and Recommendations on Reshaping B.C. Health Sector Appropriate Bargaining Units* (the "Dorsey Report"); the Report of the Commission of Inquiry into the Public Service and Public Sector (the "Korbin Report"). The consequences of that reform in the health sector have been described extensively in previous Board decisions. See for example, *Health Employers Association of British Columbia*, BCLRB No. B262/96 at paras. 6-22 and *Rose Manor*, BCLRB No. B21/96 at paras. 4-13 ("*Rose Manor*"); (reconsideration granted in part in *Health Employers Association of British Columbia*, BCLRB No. B208/96) ("*HEABC*") and *Cheshire Homes Society of British Columbia*, BCLRB No. B323/2001 paras. 51-60 ("*Cheshire*").

13 The reforms can be captured by a few simple points for present purposes, none of which attracted controversy in argument.

14 The main objective on the union/employee side was to rationalize the collective bargaining structure, in part by reducing the number of bargaining units. Consequently, unionized employees in the "health sector" are represented by associations of trade unions who bargain in respect of a bargaining unit stipulated under Section 19.4 of the HAA. The "health sector" is defined under Section 19.1 as "all members of HEABC whose employees are unionized and includes their unionized employees, and consists of the community subsector and the facilities subsector".

15 The main objective on the employer side was to facilitate the coordination of  
human resources and labour relations policies through the auspices of employers'  
associations. HEABC is the employers association for health care employers.

16 Section 6(2) of the PSEA defines the purposes of HEABC to encompass the  
coordination of labour relations matters concerning its members' union and non-union  
employees. Section 6(2) provides:

6(2) The purposes of an employers' association are to coordinate  
the following with respect to a sector:

(a) compensation for employees who are not subject to collective  
agreements;

(b) benefit administration;

(c) human resource practices;

(d) collective bargaining objectives.

17 Employers are designated as "public sector employers" under the *Health Care  
Employers Regulation*, BC Reg. 427/94. Those designated are referred to as "health  
care employers". Designated health care employers become members of HEABC.  
Section 6(4) of the PSEA provides that every public sector employer "must become and  
remain a member of the employers' association for the sector that applies to that  
employer".

18 The designation criteria are established by the Public Sector Employers Council.  
The criteria are based on the percentage of government funding for a service provided  
under contract with the government: *Rose Manor*, para. 12.

19 I add for the sake of completeness that there are voluntary members of HEABC  
but it is unnecessary to delve into that subject for present purposes. That is because  
ACMCJ has been a designated member of HEABC at all material times.

20 This legislative scheme creates a carefully defined labour relations framework for  
health care employers. The basic elements of the scheme work as follows. When non-  
union employees vote for union representation, they are included in one of the  
appropriate bargaining units defined under Section 19.4 of the HAA. That unit is added  
to the union's consolidated certification and bargaining proceeds under the existing  
framework.

21 The reforms impacted the Centre as follows.

22 Nurses became part of the nurses' bargaining unit. They are represented by the  
Nurses Bargaining Association to this day. The support staff worked under the Facilities  
Subsector Collective Agreement. This unit was added to the Union's consolidated

certification in 1996. The support staff were represented in collective bargaining by the Facilities Bargaining Association ("FBA"), often referred to inter-changeably as the HEU.

23           ACMCJ was designated a "health care employer" under Section 2 of the *Health Care Employers Regulation*, based on funding ACMCJ received to run its business at the Centre. That designation made ACMCJ a "public sector employer" under Section 1 of the PSEA. Consequently, ACMCJ became a member of HEABC. ACMCJ remains a member of HEABC.

24           The Union was decertified in 2003.

25           A new facility was developed to run the Centre on the same site. It was scheduled to open in July 2007.

#### B. Events Leading to the Incorporation of Buron

26           Giene understood that ACMCJ qualified to be a private sector partner under the *Health Sector Partnerships Agreement Act*, SBC 2003, c. 93 (the "HSPAA"). Her goal was to run part of the Centre's operation in partnership with the Interior Health Authority. Accordingly, ACMCJ applied to be designated a "private sector partner" under the HSPAA.

27           The application was rejected in April 2007. It turned out that ACMCJ was not qualified to be a private sector partner because it continued to hold the status of a "health sector employer". Section 1 of the HSPAA defines a "private sector partner" as follows:

"private sector partner" means a person who is not a health sector partner.

28           Section 1 of the HSPAA provides that a health sector partner includes a member of HEABC.

29           Giene was still determined to provide non-clinical services at the Centre under a public-private partnership. The new plan was to incorporate Buron. Buron would replace ACMCJ as the employer of the support staff. ACMCJ would continue to employ the nurses. Buron is not a member of HEABC and would qualify for designation as a private sector partner. With that status in hand, Buron could enter a public-private partnership to provide services at the Centre. To that end, Buron was incorporated on May 9, 2007—the same day the Union filed its application.

30           Giene scheduled a staff meeting to be held on May 10, 2007. The purpose of that meeting was to tell employees (except nurses) that Buron would now employ them.

#### C. Events After the Application for Certification

31           As noted above, the Board received the Union's application for certification late in the day on May 9, 2007.

32 The Board notified ACMCJ that the Union filed the application on the morning of May 10, 2007. Giene proceeded with the staff meeting, as she had earlier intended. All the employees attended except for the nurses. Giene announced that Buron would henceforth be their employer. ACMCJ would continue to employ the nurses. Buron stepped into that role immediately. It paid the employees' wages beginning May 6, 2007.

### III. POSITIONS OF THE PARTIES

33 The Union argues that a labour relations purpose lies in the preservation of the Union's and the employees' rights, under the legislative scheme governing the health sector. The Union says that extends to the employees' membership in the Facilities Subsector bargaining unit and coverage under the Facilities Subsector Collective Agreement. The Union says this result advances policy objectives underpinning that regime. The mischief is that the legislative scheme will unravel if designated public sector employers are permitted to step out of that statutory framework by running their business under another corporate vehicle.

34 The Union also emphasizes Section 6(4) of the PSEA. That provision requires that ACMCJ remain a member of HEABC so long as it is a designated public sector employer. The Union argues that the only way for ACMCJ to lose that status and leave HEABC membership, is by an amendment to the *Health Care Employers Regulation* and an application to leave the HEABC accreditation under Section 142: *Rose Manor, HEABC*. The Union submits that ACMCJ is attempting to avoid these rules by running part of the business for which it was designated a health care employer, under the auspices of Buron.

35 Buron approaches the case from a different perspective. It concedes that the Facilities Subsector Collective Agreement would apply to ACMCJ but only once its employees are unionized. Until then, ACMCJ may remove its non-union employees from the health sector by employing them by a non-health sector company.

36 Buron argues that is what happened in the present case. Buron has stepped in to employ ACMCJ's support staff and is therefore a successor to ACMCJ. All that Buron inherits from ACMCJ under the Code is a pending certification application.

37 Buron argues that no legitimate labour relations purpose is served by declaring it a common employer with ACMCJ. Buron submits:

The Union's common employer application lacks a legitimate labour relations purpose. The application seeks to dictate a collective bargaining outcome without having to engage in collective bargaining. Buron's right to free collective bargaining for a collective agreement that works for it should be paramount.

The Union's desire to impose the health sector collective bargaining structure and the health sector collective agreement on Buron is not a legitimate labour relations purpose to found a

common employer declaration. Buron is not a health sector employer. Buron cannot be made something that it is not.

Buron is entitled to have the terms and conditions of employment of its employees determined through the typical collective bargaining regime contemplated by the *Code*, rather than the health sector collective bargaining structure contemplated by the *Health Authorities Act and the Public Sector Employers Act*.

The issuance of a common employer or successor employer declaration for the sole purpose of requiring Buron to bargain collectively through HEABC and to be bound by the Facilities Subsector Collective Agreement is contrary to the purposes of the *Code*. The *Code* should not be used to further that collective bargaining structure over those established by the *Code*.

38 Buron adds that it is not a member of HEABC whose employees are unionized. Therefore, it is not a health sector employer governed by the HAA. Buron also argues that its status as a non-health sector employer defines the labour relations status quo. Granting the Union's application would upset that status quo by sweeping Buron into the "health sector", effectively deeming Buron a health sector employer and a member of HEABC when it is not. Buron contends that this status should only be conferred by regulation and in accordance with established designation criteria. Thus Buron submits that granting a common employer declaration would "have the effect of forcing Buron into a collective bargaining regime from which it has been expressly excluded by law."

39 Buron distinguishes the Board's decision in *Rose Manor* and *HEABC* on the ground that the employer in each of those cases were unionized. Buron argues that its employees are not unionized.

#### IV. ANALYSIS AND DECISION

40 It is only necessary to decide the Union's common employer application.

41 Section 38 provides:

38. If in the board's opinion associated or related activities or businesses are carried on by or through more than one corporation, individual, firm, syndicate or association, or a combination of them under common control or direction, the board may treat them as constituting one employer for the purposes of this Code and grant such relief, by way of declaration or otherwise, as the board considers appropriate.

42 An applicant must satisfy four pre-requisites to invoke the Board's discretion under Section 38: 1) there must be two entities; 2) in associated or related businesses; 3) acting under common control or direction; and 4) there must be a labour relations purpose for the declaration.

43 There is no dispute that Buron Heath Care, Buron and ACMCJ satisfy the first three criteria. The issue is whether there is a labour relations purpose to issue a declaration. This question turns on an evaluation of the Union's remedial objective given the purpose of Section 38, the specific facts at hand and the Board's Section 2 duties.

44 Section 38 is given a broad and liberal interpretation to achieve its purpose. That purpose was defined in *Baywood Enterprises Ltd., et al.*, BCLRB No. 161/74, [1975] 1 Canadian LRBR 173 as follows:

The phrase "for the purposes of the Act" [now the Code] tends to confirm that the Board should consider applying Section 37 [now Section 38] only where some value, goal or interest contemplated by the Act [the Code] will or could be served.

Essentially, the Section is intended to facilitate the resolution of labour relations issues which are clouded or confused by legal distinctions which are irrelevant to policy issues before the Board. ...The Board recognizes that corporate diversity may offer perfectly legitimate business advantages, entirely apart from labour relations issues, in such matters as taxation and financing. The concluding words of Section 37 "for the purposes of the Act", confirm that the Section was not intended to interfere with those advantages. That does not mean, however, that the Board won't rely on Section 37 to correct any adverse labour relations consequences of such decisions, even where clearly made in good faith and for valid reasons. (pp. 14-15)

45 The parties see the issue from fundamentally different standpoints. The Union posits Buron as a corporate extension of ACMCJ. It seeks to preserve ACMCJ's place in the regime set up by the intersection of the Code, the HAA and the PSEA.

46 Buron approaches the issue from an opposite perspective. Buron's submissions posit its existence in isolation from ACMCJ. Moreover, Buron does not agree that the health sector labour relations regime is a value, goal or interest contemplated by the Code.

47 In my judgment, the appropriate starting point for the analysis is to focus on ACMCJ, the nature of its business and its place within the legislative scheme governing designated "health care employers" under the PSEA, as well as employers in the "health sector" under the HAA. I have reached this conclusion for two main reasons.

48 First, it is common ground that ACMCJ and Buron operate under common control and direction. They operate associated or related businesses, under the ownership of Buron Health Care. Members in the proposed unit with ACMCJ were told that Buron employed them on the very date the Union filed its application for certification. Viewing Buron in isolation and singularly focusing on the effect of a common employer declaration on Buron, overlooks these basic facts. Second, the effect of taking this perspective is to divert attention from the substance of the Union's case. In sum, the

Union's application is an attempt to preserve the labour relations status quo by keeping ACMCJ in the established regime for health sector labour relations, not to extend that regime to an unrelated employer in an unrelated business.

49           The following points define the labour relations status quo when the Union applied for certification.

50           First, ACMCJ is a designated public sector employer of employees at the Centre. That means ACMCJ is a member of HEABC. Section 6(4) of the PSEA requires that ACMCJ remain a member, at least until it is deleted from the list of designated health care employers in the *Health Care Employers Regulation*.

51           Second, ACMCJ is a member of HEABC whose nurses are unionized. That put ACMCJ into the health sector under Section 19.1 of the HAA. I add that all of ACMCJ's employees at the Centre, both union and non-union, were in the health sector at that point in time: *Cheshire*, at para. 76.

52           Third, the PSEA, the HAA and Code, intersect to establish an integrated and comprehensive legislative scheme for designated health care employers. As noted above, the basic policy objective is twofold: 1) on the employer side, to facilitate the coordination human resources and labour relations policies for both union and non-union employees of public sector employers; and 2) on the union/employee side, to reduce the number of bargaining units to five. Section 19.1 of the HAA deems those units to be appropriate in the health sector. For more than ten years now, the Board has supervised and implemented that legislative scheme in furtherance of these policy objectives; each of which are grounded in Section 2 duties to promote conditions favourable to the orderly, constructive and expeditious resolution of disputes.

53           Therefore, I reject Buron's submission that the health sector collective bargaining regime is one that is not contemplated by the Code, at least with respect to those employers who are designated to work under it. That includes ACMCJ. Further, I accept the Union's submission that the integrity of that regime would unravel, if designated health care employers could be displaced, by the simple act of shifting employees between company payrolls.

54           I conclude that declaring ACMCJ and Buron to be a common employer serves to preserve the labour relations status quo governing ACMCJ. That status quo puts ACMCJ under a legislative framework establishing appropriate bargaining units for health care employers.

55           I will address two points in closing.

56           The Union asked that Buron Health Care be included in a declaration. I understand that Buron Health Care happens to own ACMCJ and Buron. No one argues that Buron Health Care employs anyone in the proposed unit. Further, the parties did not join issue on this point in argument. Therefore, I am not persuaded in the circumstances that a labour relations purpose will be served by declaring Buron Health

Care a common employer with ACMCJ. Accordingly, that aspect of the Union's application is denied.

57 The Union also asked for a declaration that employees in the proposed unit are covered by the Facilities Subsector Collective Agreement. This matter was touched on in case management. As I understand it, the Union and HEABC have developed an approach to deal with newly certified employees. In my view, it is appropriate to let the Union and HEABC address this matter in negotiations. The Board retains the jurisdiction to deal with this point if it becomes necessary.

V. CONCLUSION

58 I declare that ACMCJ and Buron are a common employer. I order that ballots cast at the representation vote be counted.

LABOUR RELATIONS BOARD

**"KEN SAUNDERS"**

KEN SAUNDERS  
VICE-CHAIR