

**BRITISH COLUMBIA LABOUR RELATIONS BOARD**

GOLDEN LIFE MANAGEMENT CORP.

(the "Employer")

-and-

HOSPITAL EMPLOYEES' UNION

(the "Union" or "HEU")

-and-

CHRISTIAN LABOUR ASSOCIATION OF CANADA, LOCAL 501

("CLAC")

PANEL:	Allison Matacheskie, Vice-Chair
APPEARANCES:	Vincent P. Johntson, for Golden Life David Tarasoff, for HEU Timothy G. Charron, for CLAC
CASE NO.:	54744
DATES OF HEARING:	May 24 and 25, and June 1 and 2, 2006
DATE OF DECISION:	August 1, 2006

**DECISION OF THE BOARD**

**I. NATURE OF THE APPLICATION**

1 Golden Life Management operates six seniors' care facilities in British Columbia. One facility is certified to HEU. The other five facilities are non-union. In March and April of 2006, CLAC and HEU were both conducting organizing drives at some of the facilities. On March 29, 2006, CLAC applied for certification at Joseph Creek Village and on April 5, 2006, HEU applied for certification at Crestview Village. After the applications for certification were filed, the Employer negotiated a voluntary recognition agreement with CLAC, intended to cover all the non-union facilities and scheduled meetings with the employees for the purpose of ultimately conducting ratification votes. At each facility, there was a mandatory meeting with the Employer followed by a voluntary meeting with CLAC.

2 HEU alleges that the Employer has interfered in the administration and selection of a trade union contrary to Section 6(1) by entering into a voluntary recognition agreement with CLAC in order to undermine the HEU's certification application at Crestview Village and to thwart its organizing at other facilities. HEU also alleges that CLAC has violated Section 6(1) as a person acting on behalf of an employer. HEU also alleges that the Employer breached Sections 6(3)(d) and 9 of the Code by holding captive audience meetings in which it used threats to influence employees against HEU by linking HEU membership with job loss.

**II. FACTS**

3 The six seniors' care facilities operated by Golden Life Management are Rocky Mountain Village in Fernie, Columbia Gardens in Invermere, Joseph Creek in Cranbrook, Crestview Village in Creston, Castlewood Village in Castlegar and Rosewood Village in Trail.

4 In June 2005 HEU was certified to represent employees at Rocky Mountain Village. A collective agreement was concluded in early December 2005.

5 In March 2006 CLAC approached the Employer about a voluntary recognition agreement. It is unclear if CLAC suggested a voluntary recognition agreement for one facility or for all non-union facilities in B.C. The Employer did not enter into negotiations for a voluntary recognition arrangement with CLAC.

6 In March of 2006, the Employer was advised by employees of Rosewood Village that HEU was conducting an organizing campaign at that site. HEU commenced organizing at Columbia Gardens on April 6, 2006, and at Castlewood Village on April 13, 2006. There is no evidence that the Employer was aware of HEU organizing at those other sites. CLAC also started organizing at Rosewood Village in March 2006. There is no evidence that the Employer was aware of CLAC organizing at that location.

7 On March 29, 2006, CLAC applied for certification for a bargaining unit of all employees except office staff at Joseph Creek. On April 3, 2006, HEU applied for certification for a bargaining unit of employees at Crestview Village.

8 On April 5, 2006, the hearing for the CLAC application for certification commenced at the Board. HEU attended and was granted standing. HEU objected to the certification application on the basis of the build-up principle as the facility is presently under construction to expand. The Employer did not oppose the CLAC application.

9 On April 5, 2006, the Employer and CLAC met to commence collective bargaining for a voluntary recognition collective agreement. The intention was to negotiate a collective agreement that would be applied at all Golden Life Management sites except Rocky Mountain Village which is presently certified to HEU. On April 6, 2006, the Employer and CLAC met again to continue bargaining.

10 On April 6, 2006, the Employer had a meeting with the employees of Joseph Creek. Bonne Porat is the Chief Operating Officer of Golden Life Management. She was asked by the management of Joseph Creek to come and update employees on the CLAC application for certification at Joseph Creek and to address concerns expressed by employees about pressure from HEU. At the meeting, Porat advised that HEU was opposing the CLAC certification on the basis of the build-up principle. At this meeting, Porat also told employees that she had been told about employees' concerns about HEU's conduct in organizing and that Golden Life Management was supporting the employees. She told employees that Golden Life Management had spoken to its legal counsel and he was writing a letter to HEU about their concerns.

11 On April 7, 2006, the Employer had a meeting with employees of Crestview Village. The purpose of the meeting was to discuss the HEU application for certification at Crestview Village. At the meeting, the employees appeared confused and said they did not know anything about the HEU certification application. Porat told the employees at the meeting that the Employer was not sure how "this" happened. After the meeting, employees of Crestview Village were phoned by the Employer and asked if they still held casual status with Interior Health Authority ("IHA"). The reason the Employer made these phone calls was because they wanted to know if HEU was relying on membership cards related to IHA workplaces. After looking into it, the Employer's conclusion was that it was still not sure what happened.

12 On April 7 and 8, 2006, the Employer and CLAC continued to bargain by telephone conferences. On the evening of Saturday, April 8, 2006, they concluded bargaining and agreed upon the terms for a voluntary recognition collective agreement.

13 On April 8, 2006, the Employer posted a notice at Columbia Gardens and Joseph Creek Village advising the employees of a mandatory meeting where the Employer would explain the background and rationale which led the Employer to enter into a tentative collective agreement through voluntary recognition. The notice also advised that there was a voluntary meeting with the union immediately following the mandatory

meeting with the Employer where the employees would have the opportunity to review the proposed collective agreement, ask questions and conduct a ratification vote.

14 On April 10, 2006, the Employer had mandatory meetings with employees of Columbia Gardens in Invermere and with employees of Joseph Creek Village in Cranbrook. At both locations, after the meeting with the Employer, there was a meeting with CLAC where the employees ratified the voluntary recognition agreement.

15 On April 11, 2006, the hearing for the HEU application for certification of Crestview Village commenced at the Board. The Employer did not oppose HEU's application for certification as a stand-alone unit but objected to the appropriateness of a variance of the possible Crestview Village bargaining unit into the existing Rocky Mountain Village bargaining unit.

16 On April 11, 2006, the Employer held a mandatory meeting with the employees of Rosewood Village in Trail and another meeting with employees of Castlewood Village in Castlegar. After both meetings, there was a meeting between CLAC and the employees for the purpose of presenting the proposed collective agreement and conducting a ratification vote. At both locations, the employees either decided not to have a vote or voted against the collective agreement proposed by the Employer and CLAC.

17 On April 12, 2006 the Employer held a mandatory meeting with employees of Crestview Village in Creston. The meeting was followed by a meeting between CLAC and the employees in the same manner as at the other sites. At Crestview Village, the employees either decided not to have a vote or voted against the proposed collective agreement.

18 At the mandatory meetings, Porat said that a negotiator for HEU made a statement at the commencement of bargaining for Rocky Mountain Village that HEU was philosophically opposed to private companies in health care. She also told the employees that CLAC was not philosophically opposed to private companies like Golden Life Management and that CLAC had told the Employer that keeping the company in business is good for employees or that CLAC was not interested in putting the company out of business.

19 Porat was not sure if she said these comments at every meeting but may have. At each meeting, she worked from the same set of notes that she had prepared ahead of time to organize her thoughts. These notes include a comment about meeting with CLAC to determine its philosophy and approach and that it was quite different from HEU. In these circumstances, I find that Porat made the comments at every mandatory meeting concerning HEU being philosophically opposed to for profit companies in health care and the comments concerning CLAC's philosophy being different and that CLAC was not interested in putting the company out of business.

20 Porat found the comments from HEU that they were philosophically opposed to  
private for profit companies in health care to be "somewhat threatening". She did not  
explicitly tell employees that she found it somewhat threatening.

21 At the meetings, Porat advised employees that Golden Life Management had a  
good relationship with HEU.

22 The Employer has contracts with IHA for the provision of residential care,  
assisted living or home support for seniors. At the meetings, Porat also advised  
employees that the intention of IHA was to move 80 per cent of beds to private facilities.

23 At each of the meetings, Porat explained the Employer's rationale for bargaining  
a voluntary recognition collective agreement with CLAC. The essential message that  
the Employer communicated at the meetings was that it preferred to stay non-union. It  
wanted to do what was best for the residents and be proactive. In doing so, it thought  
about the philosophy statements of both unions and IHA's intention to increase the  
number of private beds. Based on these considerations, it made the decision to enter  
into a voluntary recognition agreement with CLAC.

24 More than once at every meeting, Porat explained to the employees that they  
had a choice.

25 During at least one of the meetings, an employee expressed a concern about  
being displaced by HEU employees laid off from other facilities and Porat responded  
that HEU would not be allowed to displace them.

### III. SUBMISSIONS OF THE PARTIES

26 HEU argues that the Employer breached Section 6(1) of the Code, and that  
CLAC as a person acting on behalf of the employer breached section 6(1) of the Code,  
by interfering in the selection and administration of a union.

27 HEU argues that the Employer also violated Sections 6(3)(d) and 9 by reason of  
statements made by Porat at meetings with employees and specifically when she made  
statements linking union membership to job security. It argues by linking union  
membership and job security, the Employer intimidated and coerced the employees.

28 HEU submits that the test applied by the Board is an objective one and a  
reasonable employee would conclude that the Employer not only opposed HEU but  
disapproved of HEU. The HEU says those comments standing alone violate Sections 6  
and 9.

29 Alternatively, HEU argues that the statements are a violation of the Code when  
considered in the totality of the circumstances: *Convergys Customer Management  
Canada Inc.*, BCLRB No. B111/2003, (Leave for Reconsideration of BCLRB No.  
B62/2003), 90 CLRBR (2d) 287 at p. 295. HEU argues that in this case the totality of  
the circumstances include the fact that bargaining for a voluntary recognition agreement

with CLAC commenced immediately after the Employer became aware of the HEU certification application and was conducted with lightening speed. Then, there was a series of captive audience meetings with the employees at each location in rapid succession. At these meetings, the Employer made statements that linked job security with union membership. HEU argues that when the extraordinary sequence of events and lightening speed timing is also taken into consideration, it is beyond a doubt that the relationship between the Employer and CLAC was an attempt to pre-empt HEU. It says the Employer's apparent indifference to CLAC was transformed into an imperative once HEU was organizing.

30 HEU also argues that the meeting at Crestview Village on April 7, 2006 amounts to an inquiry into the nature of HEU membership evidence. It argues the Employer's quest was ill conceived and inherently requires probing into who signed union membership cards and who did not. It argues that it is hardly surprising employees expressed surprise and confusion when the Chief Operating Officer is inquiring. It would be very surprising if they all held up their hands and said yes we support HEU.

31 HEU argues that the selective nature of the employer's information is also troubling as Porat omitted telling employees about HEU's willingness to work with the Employer.

32 HEU says it is of no consequence that the effort of the Employer was of limited success. Except at Joseph Creek Village and Columbia Gardens, the employees voted against the CLAC collective agreement or refused to participate. However, HEU argues that this does not detract from the fact that unfair labour practices have occurred.

33 Turning to the issue of whether CLAC violated the Code, HEU's submissions on the allegations against CLAC assume a finding that the Employer violated Section 6(1).

34 HEU argues CLAC was the device or tool used by the Employer to achieve an unlawful objection. HEU argues that if I agree that CLAC is a person acting on behalf of an employer then it is a small step to find CLAC was dominated or influenced by the Employer. If someone is acting on behalf of an employer they are influenced by that employer.

35 HEU submits that Section 31 of the Code applies to well established unions and not just newly formed ones and can be triggered even if only one aspect or location of the union is employer dominated.

36 HEU also argues that even if I find that CLAC was entering into a perfectly legitimate and lawful relationship with the best of intentions and wanted to help the employees, CLAC still violated Section 6(1). It is well established law that there is no requirement of anti-union animus for a violation of Section 6(1). A person may be motivated by the best of intentions but if that person acts as an employer device used to influence employees against a trade union, it is a violation of the Code.

37 The Employer submits that the allegations in the complaint are serious and yet HEU did not have evidence from one single employee present at any of the various meetings. HEU called Porat as its main witness. She was called as a witness by HEU under Rule 20 of the Labour Relations Board Rules. There were numerous allegations in the filed complaint which were not even put to Porat during her testimony. The Employer argues that the original theory of the Union's case is very different from the theory presented in final argument. It says that HEU's case is in shambles and therefore HEU is now trying a new spin by saying there are implicit threats linking job security to HEU membership. The Employer says there is no evidence of any threat to job security in this case, implicitly or explicitly. The Employer submits that it did not call any evidence because there is no case for the Employer to meet.

38 The Employer argues that HEU wants to focus on those comments that it interprets as meaning support for HEU will result in job loss and support for CLAC will not. However, the Employer says this does not fit in with the overall context which has to be considered. It argues that it is relevant that the Employer also told employees that it had a good relationship with HEU and it was known that HEU was certified at Rocky Mountain, there was a collective agreement in force and there was no job loss at that site. The Employer emphasizes that Porat said to employees that they have choices. She talked about the choice concerning the CLAC collective agreement and also the choice of no union.

39 The Employer submits that it is not a violation of the Code to enter into a voluntary recognition agreement with a union. In this case, the Employer also provided its rationale for being proactive. It was concerned about the pressure being felt by the employees and the impact it could have on resident care. The Employer argues that this is a valid concern and it is not inappropriate for an employer to be proactive in such circumstances.

40 The Employer argues that the context of the statements also includes the fact that there were two applications for certification pending at the time of the meetings and the Employer was concerned about labour unrest. It argues that at the time the Employer commenced bargaining with CLAC, there was already an application for certification filed by CLAC for the employees at Joseph Creek. The Employer also argues that there is no evidence or even an allegation that the Employer had any involvement in the CLAC organizing drive. There is no evidence that CLAC was invited to organize by the Employer and there is evidence that CLAC was organizing at sites other than Joseph Creek.

41 Concerning the allegation that bargaining with CLAC was conducted at lightening speed, the Employer argues that there is no evidence of any sweetheart deal being made or that CLAC is acting in its own interests to the detriment of the employees. Bargaining was completed over a period of a few days but there is no evidence of how long the bargaining sessions were or what changes were made. The Employer submits that sometimes bargaining is fast and sometimes it is slow. Each set of bargaining depends on the circumstances.

42 The Employer argues there are many possible theories concerning why bargaining proceeded quickly other than the HEU theory that it was done solely to pre-empt HEU. It speculates that perhaps the Employer had learned a lot from the negotiations with HEU at Rocky Mountain and entered into bargaining with realistic expectations. It also speculates that CLAC had a template for a private service provider agreement and therefore bargaining was not from scratch. The Employer submits that these theories are equally plausible as the HEU's theory and that all these theories are not supported by any evidence. It argues that the Union's case is built on theory and speculation and nothing more.

43 The Employer distinguishes the case of *347143 B.C. Doing Business as Westside Foods*, BCLRB No. B178/97 (Leave for Reconsideration of BCLRB No. B402/96) ("*Westside*"), which was relied on by HEU, arguing that in that case there was clear evidence that the actions of the employer did affect employees. It argues that there is no evidence here of any improper interference. The Employer says that the ultimate effect of Porat's meetings with the employees is that they exercised their rights to choose. At Joseph Creek and Columbia Gardens, where CLAC had a presence, the employees voted in favour of the voluntary recognition agreement between CLAC and the Employer. Where CLAC did not have a presence, the employees voted against the voluntary recognition agreement or decided not to have a vote.

44 The Employer agrees that a finding of anti-union animus is not required to find a violation of Section 6(1) of the Code but argues that motivation may still be a relevant factor. The Employer argues that there is no evidence before me that CLAC is somehow inferior. There is no evidence of any sweetheart deal or of agreeing to a collective agreement which advances its own interests to the detriment of employees. As well, the Employer has explained its rationale for being proactive and it is not inappropriate for them to have been proactive in these circumstances.

45 The Employer argues that mistaken or incomplete statements, as long as genuinely held, do not amount to an unfair labour practice and this is a complete answer to HEU's argument that Porat was selective in the information provided to the employees.

46 The Employer says the comments from the Board in *RMH Teleservices International Inc.*, BCLRB No. B188/2005 (Leave for Reconsideration of BCLRB No. B345/2003), 114 CLRBR (2d) 128 ("*RMH*") on forced listening apply in the unique circumstances of that case and not to meetings concerning a tentative voluntary recognition agreement as occurred in this case.

47 Concerning the allegations surrounding the meeting at Crestview Village on April 7, 2006, the Employer submits that there is no evidence of any inquiring into membership evidence. It says the unchallenged evidence is that employees were shocked that there was an application by HEU and the Employer simply said they did not know if HEU was relying on cards from employees who held casual status with IHA or not. After the meeting, the Employer was still not sure.

48 The Employer also submits that there is no evidence which establishes a link  
between organizing at the other sites and its knowledge of such organizing.

49 CLAC says there is nothing improper in the statements alleged to be said by the  
Employer and regardless of what was said it has to be proven that it was material  
because it affected the wishes of employees.

50 CLAC says the comments made by the Employer about CLAC supporting for  
profit employers and HEU not supporting them is true and employers should be allowed  
to tell employees the truth. Employees are entitled to be part of this vigorous debate  
which is relevant to their workplace.

51 CLAC also argues there is no evidence of Employer involvement in its organizing  
efforts at Joseph Creek Village.

52 CLAC submits that the Board has already heard the arguments of CLAC being  
employer dominated in other cases and those arguments were unsuccessful. CLAC  
says as a matter of the Board's records, the sentiment is that CLAC is in it for  
themselves and is not doing the bidding of an employer. It argues that the plausible  
explanation for CLAC entering into the voluntary recognition agreement with Golden Life  
Management is that CLAC is in it for the employees and the dues and it is an  
organization looking to grow.

53 CLAC argues that there is nothing extraordinary in the facts of this case. CLAC  
approached the Employer looking to enter into a voluntary recognition agreement.  
When it was not successful, it started organizing the employees. After it filed an  
application for certification, the Employer and CLAC then sat down to negotiate a  
voluntary recognition collective agreement. This is not extraordinary.

54 CLAC also argues that the Employer is allowed to have captive audience  
meetings and every employer who enters into a tentative voluntary recognition  
agreement has a captive audience meeting with its employees to promote the voluntary  
recognition agreement.

55 CLAC argues that there is no evidence that it ran ratification votes where HEU  
was organizing.

56 CLAC argues that there are no cases before the Board where employees did not  
testify and CLAC says the Board needs to have an employee testify concerning whether  
the ratification votes reflect the true wishes of the employees.

#### IV. ANALYSIS AND DECISION

57 Section 6(1) of the Code states:

Except as otherwise provided in section 8, an employer or a person  
acting on behalf of an employer must not participate in or interfere

with the formation, selection or administration of a trade union or contribute financial or other support to it.

58 Section 8 of the Code states:

Subject to the regulations, a person has the freedom to express his or her views on any matter, including matters relating to an employer, a trade union or the representation of employees by a trade union, provided that the person does not use intimidation or coercion.

59 Sections 6(3)(d) and 9 state:

6. (3) An employer or a person acting on behalf of an employer must not
  - (d) seek by intimidation, by dismissal, by threat of dismissal or by any other kind of threat, or by the imposition of a penalty, or by a promise, or by a wage increase, or by altering any other terms or conditions of employment, to compel or to induce an employee to refrain from becoming or continuing to be a member or officer or representative of a trade union,
9. A person must not use coercion or intimidation of any kind that could reasonably have the effect of compelling or inducing a person to become or to refrain from becoming or to continue or cease to be a member of a trade union.

60 An employer may breach Section 6(1) by entering into a voluntary recognition agreement with a trade union, if it influences employees to support that trade union instead of another union. In *Delta Hospital*, BCLRB No. 76/77, [1978] 1 Can LRBR 356 ("*Delta Hospital*") at pp. 369-370, the Board held that:

First of all, it is quite clear that the Code's unfair labour practice provisions, and their interaction with certain remedial sections, place one restraint on the idea of voluntary recognition. If, as we earlier postulated, an employer signs a collective agreement with an uncertified trade-union and *thus unduly influences his employees in favour of that trade-union and against another*, that would be a breach of Section 3(1) [now 6[1]] of the Code:

\* \* \*

The Board will look in every case at the circumstances in which the agreement was executed, the reasons for the recognition, the effect that it had or likely had on the voluntary decision of employees, and whether the employer really has *unfairly contributed its support to one union in contest with another* (c.f. *British Columbia Railway Company*, [1974] Can. L.R.B.R. 97). (emphasis added)

61 In this case, the Employer entered into a voluntary recognition agreement because it was aware of the two unions conducting organizing drives in its workplace and filing certification applications. It preferred to remain non-union. However, if it became unionized, it preferred to have its employees represented by a union that was not philosophically opposed to private employers in health care. It felt that HEU's philosophical opposition to for profit health care businesses was "somewhat threatening". The Employer was also concerned about the pressure being felt by the employees and the impact it could have on resident care. For these reasons, the Employer decided to be proactive and quickly entered into a voluntary recognition agreement with CLAC and conducted a rapid succession of meetings with its employees for the ultimate purpose of having the collective agreement with CLAC ratified by the employees at all of its non-union facilities

62 The collective agreement was negotiated within four consecutive days ending on a Saturday evening. Some of the notices to schedule the meetings for the ratification votes were posted that same evening. The meetings were held at all non-union locations, including Crestview Village even though HEU had applied for certification at that location and Rosewood Village even though the Employer was aware that HEU was organizing at that location. The meetings at all of the Employer's workplaces were completed within four days of the conclusion of the negotiations. Therefore, the whole process of bargaining a collective agreement and having meetings for the purpose of conducting ratification votes was completed within eight days.

63 CLAC argued that there was nothing extraordinary in the sequence of events in this case as negotiations for a voluntary recognition agreement simply commenced on the same day as CLAC's application for certification was heard at the Board. However, when considered in the context of the Employer's stated rationale for entering into the voluntary recognition arrangement and the totality of the circumstances, I find that the sudden commencement and quick conclusion of negotiations and the rapid scheduling of the meetings with the employees for ratification votes were for the purpose of ensuring that the voluntary recognition collective agreement with CLAC would be placed before the employees before the HEU certification application was adjudicated by the Board or the HEU organizing drive made more headway in the workplace.

64 At the meetings, the Employer stated that HEU was philosophically opposed to private companies like the Employer in health care and CLAC was not philosophically opposed to private companies in health care and that CLAC felt that it was good for the employees for the Employer to remain in business. I find that reasonable employees would have heard the message from the Employer to be that they should choose CLAC because it supports the Employer remaining in business and they should not choose HEU as it wants to put the Employer out of business.

65 One question I must answer is whether these comments made in the circumstances of this case are intimidating or coercive within the meaning of Sections 6(3)(d) and 9 of the Code. Employees are generally in a position where they can assess statements such as this and ask questions of the union organizers or check other sources of information. As set out in *Convergys Customer Management Canada*

*Inc.*, BCLRB No. B62/2003 (upheld on reconsideration in BCLRB No. B111/2003), at para. 118:

Taken as the whole, the Legislature's amendments to Sections 2, 6(1) and 8 reflect important judgments about the ability of employees to make free choices about union representation, despite attempts to influence their decision-making through the expression of views that are not coercive or intimidating. The amendments reflect the confidence that a reasonable employee can make inquiries and assess these views, knowing that most often, their employer will view their participation in a union and collective bargaining as contrary to the employer's self-interest.

66 The comments made by the Employer are of the sort that can be verified by the employees. The Employer did not give the employees a complete picture of what HEU said to it about being philosophically opposed to private companies in health care. When HEU stated its opposition to for profit businesses in health care at the commencement of bargaining at Rocky Mountain Village, it also made the point of stating that it was prepared to work with private employer's like Golden Life Management and that it had a lot of collective agreements with private, health care employers. An employer can make mistaken or incomplete statements. However, in this case when the Employer did not provide a complete picture of HEU's position it resulted in the statement being simplistic and likely leading the employees to conclude that HEU had suggested to the Employer that it would do what it could to force it out of business once HEU was certified. In this case, the employees did not have any opportunity to verify or question the bald statements made by the Employer. The employees were called into the mandatory meetings on very short notice. There is no evidence before me of what the Employer said at the meeting concerning the voluntariness of the meeting with CLAC. However, the notice posted at all the facilities advising the employees of the mandatory meetings with the Employer said that the purpose of the meeting was to present a tentative collective agreement through voluntary recognition and the purpose of the meeting with the Employer was to explain the background and rationale which led to that outcome. The same notice then stated as follows:

Immediately following the above meeting, the union will present the proposed collective agreement to you. You will have the opportunity to ask questions, review the agreement and vote. Please note: this meeting is not mandatory.

67 Although the employees were provided with an opportunity to ask CLAC questions, they were not provided with an opportunity to ask HEU any questions or even time to reflect on what they had been told by the Employer or have discussions amongst themselves. The employees were expected to immediately participate in a meeting with CLAC that was to end with a ratification vote. I note as well that the notice did not refer to the name of the union and therefore, the employees presumably did not know until the meetings started whether the voluntary recognition agreement was with CLAC or HEU.

68 As well, it is a significant factor that the Employer's comments were made during captive audience meetings. The reconsideration panel in *RMH* concluded that the concept of forced listening is helpful in striking the intended balance between the right of expression and employee free choice:

...we conclude that the concept of "forced listening" comes closer to capturing the essence of what can make an otherwise acceptable employer expression of views during an organizing drive coercive or intimidating. Section 8 does not guarantee an audience. The right of expression under Section 8 does not entail a right to compel others to listen to those views. A reasonable employee who has no choice but to listen to an employer's views regarding unionization may feel coerced or intimidated by the very fact that they have no choice but to hear their employer's views. Whereas they can turn away from a union organizer or a co-worker and decline to listen to them on the topic of unionization, an employee is far less able to turn away from their employer. By virtue of their authority in the workplace, employers can compel their employees to listen to them. Compelled or forced listening raises serious concerns regarding employee free choice on the issue of unionization. (para. 58)

69 The key determination I must make is whether intimidation and coercion have been used to influence the employees. The circumstances of this case convey a sense of urgency from the Employer and when combined with the Employer's simplistic comments that it preferred CLAC over HEU because CLAC wants the Employer to remain in business, I find that the reasonable employee would have felt pressure and thus, employee free choice has been undermined. If the comments had been made under different circumstances, my conclusion may have been different. However, the lack of any opportunity to reflect or question the information given by the Employer leads me to conclude that a reasonable employee would have felt intimidated or coerced at the critical point in time when they were being asked to accept the voluntary recognition agreement with CLAC.

70 In coming to this conclusion, I have also taken into consideration the fact that the Employer also said at the mandatory meetings that it had a good relationship with HEU and that the employees had a choice. However, without having time to consider the totality of what was said by the Employer and without having any opportunity to make inquiries, I find that a reasonable employee would have heard the urgent message from the Employer to be that it had chosen CLAC and hoped the employees would as well because CLAC wanted it to remain in business.

71 I have also considered that it is most likely that all employees were aware of the successful relationship between HEU and the Employer at Rocky Mountain Village. However, this was not something discussed at the meetings and due to the lack of time for general reflection or discussion prior to the ratification votes, I find that it would not relieve the employees of the pressure they would likely be feeling at the time of the ratification votes.

72 Therefore, I find the statements made in this context are intimidating and  
coercive. These statements link HEU membership to job security and amount to the  
use of a threat or instilling fear for the purpose of influencing the employees to vote for  
the CLAC voluntary recognition agreement and not support HEU.

73 In coming to this conclusion, it is not necessary for me to hear the evidence of  
employees saying that they were affected by the statements made in this context. Nor  
does the fact that at some locations the employees voted against the CLAC voluntary  
recognition agreement or refused to participate in a vote mean that the Board should  
use a subjective test rather than an objective one in this case.

74 In the circumstances of this case, I find that the Employer has breached Sections  
6(3)(d) and 9 of the Code.

75 I also find that in the totality of the circumstances, the Employer is interfering in  
the selection and administration of a trade union contrary to Section 6(1). Although  
Section 8 of the Code allows an employer to express a preference for one union over  
another, the action taken here by the Employer to solidify its relationship with CLAC  
constitutes interference with the employees' right to freely select the union of their  
choice. The Employer has breached Section 6(1) of the Code.

76 Even if I had found that the Employer's comments were not intimidating or  
coercive, I would still find that the Employer violated Section 6(1) by entering into a  
voluntary recognition agreement and attempting to have it ratified by the employees in  
such a hurried manner during competing organizing drives.

77 I also find that the Employer's questions to the employees at the meeting at  
Crestview Village on Friday, April 7, 2006 were aimed at determining if HEU was relying  
on cards obtained from employees in their status as casual employees for IHA. This  
amounts to an inquiry concerning whether or not employees signed membership cards  
and as such amounts to a violation of Sections 6(1) and 9 of the Code.

78 I now turn to the allegation that CLAC breached Section 6(1) of the Code as a  
person acting on behalf of an employer. The Employer did not invite CLAC into its  
workplace to organize its employees or propose bargaining a voluntary recognition  
agreement. When CLAC's initial approach to the Employer for a voluntary recognition  
agreement was unsuccessful, it commenced organizing and obtained sufficient support  
to apply for certification at Joseph Creek. There was no discussion between the  
Employer and CLAC about HEU's organizing efforts for employees of Golden Life  
Management. However, it was clearly something that CLAC was aware of as HEU  
attended at the hearing into CLAC's certification application on April 5, 2006 and  
opposed the application. Also, on April 4, 2006, the Board sent notice to CLAC of the  
HEU application for certification at Crestview.

79 Due to the Employer's stated rationale of wanting to be proactive and obtain  
labour peace when two unions were organizing at its workplace, it is highly likely that  
the Employer approached CLAC to reopen discussions about a voluntary recognition

agreement sometime after it became aware of HEU organizing. The question before me is whether CLAC is acting on behalf of the Employer when it agrees to reopen discussions about a voluntary recognition agreement. On the one hand, CLAC was already in the midst of organizing and had approached the Employer about entering into a voluntary recognition agreement back in March of 2006. However, on the other hand, CLAC was aware of HEU's application for certification at Crestview Village when it negotiated a collective agreement with the Employer that was intended to cover all locations of the Employer and towards that end, CLAC held a meeting at Crestview Village on April 12, 2006, to present the tentative collective agreement and conduct a ratification vote despite the fact that the HEU certification application was still pending at the Board.

80 In these circumstances, CLAC would have known that its voluntary recognition agreement if ratified at all locations would thwart the HEU organizing campaign and potentially raise a bar to the HEU certification application at Crestview Village. However, this does not mean that CLAC is acting on behalf of the Employer. Its objective might have been the same as the Employer's but in light of the fact that it had approached the Employer about a voluntary recognition earlier and had commenced organizing without any involvement of the Employer, I find that CLAC was not acting on behalf of the Employer within the meaning of Section 6(1) of the Code.

81 HEU's arguments that CLAC is employer dominated flowed from an allegation that CLAC acted on behalf of the Employer in the circumstances of this case. I dismiss all complaints against CLAC.

#### V. REMEDY

82 I declare that the Employer violated Sections 6(1) and 6(3)(d) and 9 of the Code when it entered into a voluntary recognition agreement with CLAC in an effort to thwart the organizing campaign of HEU and made statements linking HEU membership with job security that amounted to the use of a threat or instilling fear for the purpose of influencing the employees to vote for CLAC and not support HEU.

83 I order the Employer to cease and desist from any further violations.

84 As there is no evidence that the Employer invited CLAC in to organize or was in any way involved in the organizing campaign of CLAC for Joseph Creek Village, I do not dismiss the application for certification filed by CLAC for Joseph Village on March 29, 2006. The vote held for the certification application by CLAC occurred on April 7, 2006 and was sealed subject to the adjudication of the objection made by HEU. The statements of the Employer which I have found to violate the Code occurred after the representation vote at Joseph Village and therefore, I find that the violations could not have affected the wishes of the employees in that vote.

85 I declare pursuant to Sections 143 and 139(c) and (g) that the collective agreement struck between the Employer and CLAC in relation to Joseph Creek Village

and Columbia Garden Village is not a collective agreement within the meaning of the Code and is of no force and effect.

86 I do not find the argument of CLAC on this issue to be persuasive. CLAC argued since it is not seeking a declaration from the Board that the voluntary recognition is valid, HEU bears the onus of establishing that it is not valid. It argued HEU did not bring any witnesses to testify that the ratification vote did not reflect their true wishes and therefore the Board should find that there is no evidence on that issue and decline to make a determination one way or the other.

87 The test is an objective one. The ratification vote was preceded by statements from the Employer that were a coercive and intimidating attempt to influence the employees to vote in favour of the CLAC voluntary recognition agreement. It is on the basis of this evidence that I find that the ratification votes do not reflect the true wishes of the employees.

88 I order that there be one employer paid meeting at each non-union location between HEU and the employees for the purpose of dispensing copies of this decision and discussing organizing at Golden Life Management facilities or other matters that arise out of this decision.

89 I order the Employer to post a copy of this decision in a prominent place in each location of Golden Life Management for not less than one month from the date of this decision.

90 I decline to order a remedial certification for any location of the Employer pursuant to Section 14(4)(f). The test for a remedial certification is whether, but for the employer's unlawful conduct, it is more probable than not that a union would have achieved the requisite support: *Cardinal Transportation B.C. Incorporated*, BCLRB No. B344/96 (Reconsideration of BCLRB Nos. B463/94 and B232/95), 34 CLRBR (2d) 1 at p. 67, *The Brick Warehouse Corporation*, BCLRB No. B309/2002, 85 CLRBR (2d) 264 at p. 279.

91 In this case, I find the evidence falls short of establishing that the Union would have achieved the requisite support but for the Employer's conduct. In particular, at Rosewood Village a similar number of membership cards were signed in the two-week period following the mandatory meetings as had been signed in the two-week period preceding the meetings. I find that the other remedies provided are sufficient to remedy the unfair labour practices in this case.

LABOUR RELATIONS BOARD

**"ALLISON MATACHESKIE"**

ALLISON MATACHESKIE  
VICE-CHAIR