

BRITISH COLUMBIA LABOUR RELATIONS BOARD

THE GOOD SAMARITAN SOCIETY

(the "Employer")

-and-

HOSPITAL EMPLOYEES' UNION

(the "Union")

PANEL:	G.J. Mullaly, Vice-Chair
APPEARANCES:	Dev Chankasingh, for the Employer David Tarasoff, for the Union
CASE NO.:	55589
DATE OF HEARING:	November 10, 2006
DATE OF DECISION:	January 17, 2007

DECISION OF THE BOARD

I. INTRODUCTION

1 The Union applied under Section 142 of the *Labour Relations Code* (the "Code")
to vary a certification it holds for a unit composed of employees at a facility in Gibsons
to include employees at two facilities in Salmon Arm. The Employer objects to the
application on the basis that the proposed unit is not appropriate for collective
bargaining.

II. BACKGROUND

2 The Employer provides assisted living and continuing care services at five
facilities it operates in British Columbia. One of the facilities is in Gibsons (Christenson
Village), two are in Salmon Arm (Hillside Village and Pioneer Lodge), and the other two
are in Penticton and Kelowna.

3 The services the Employer provides at its Gibsons' facility are provided pursuant
to contracts with Vancouver Coastal Health Authority and the British Columbia Housing
Department; the services it provides in Salmon Arm are provided pursuant to contracts
with Inland Health Authority and the British Columbia Housing Department.

4 In August 2006, the Union was certified to represent the employees at and from
Christenson Village in Gibsons, except registered nurses. In November 2006 it applied
to vary that certification to include employees at and from Hillside Village and Pioneer
Lodge in Salmon Arm. As of the date of the variance application and the parties'
subsequent submissions, no collective agreement had been achieved with respect to
the Union's existing unit.

III. POSITIONS OF THE PARTIES

5 The Employer submits that the factors enunciated by the Board in *Island Medical
Laboratories Ltd.*, BCLRB No. B308/93 (Leave for Reconsideration of IRC No. C217/92
and BCLRB No. B49/93), (1993), 19 CLRBR (2d) 161 ("*IML*") favour a separate
bargaining unit for the employees at its Salmon Arm facilities. It concedes that there is a
general similarity of skills, duties and working conditions between the employees at the
Salmon Arm and Gibsons facilities but, citing *IML* and two subsequent decisions, it
maintains that this factor is of limited conceptual guidance. The Employer also submits
that the remaining *IML* factors rebut the presumption against multiple bargaining units.
In particular it relies on the fact that (i) there are on-site managers at all its facilities and
each facility has its own budget, accounting reporting structure and management; (ii)
there is no functional integration between the Salmon Arm and Gibsons facilities; and
(iii) Gibsons is approximately 500 kilometres from Salmon Arm.

6 Although the Employer concedes that the fifth *IML* factor is neutral since there is no history of collective bargaining between it and the Union, it contends that the practice and history of collective bargaining in the industry or sector does not support a finding that the proposed unit is appropriate. According to the Employer, except where there is functional integration between sites, "...certification and collective bargaining in the continuing care and assisted living sector in British Columbia for employers who do not belong to the Health Employers' Association of British Columbia, is done on a site-by-site basis."

7 Finally, the Employer submits that "...since it is a contract service provider in the health care industry, its bargaining unit structure should mirror the contracts between it and third parties."

8 The Union submits that the Employer's objection to its application is without merit and that the varied unit applied for is an appropriate bargaining unit. Given the conclusion that I have reached it is not necessary to set out the Union's arguments.

IV. ANALYSIS AND DECISION

9 While an all-employee unit may sometimes not be an appropriate unit, if a union applies for such a unit, a party opposing the application must adduce compelling evidence that the unit applied for is not appropriate for collective bargaining: *WMI Waste Management of Canada Inc.*, BCLRB No. B53/93, p. 6 ("*WMI Waste Management*").

10 The reasoning in *WMI Waste Management* was relied on by the original panel in *Compass Group Canada (Health Services)*, BCLRB No. B6/2006, para. 139 (Upheld on Reconsideration: BCLRB No. B71/2006) ("*VIHA*"), a case involving a contract service provider in the health care industry. Compass sought reconsideration on the ground that the original panel had failed to properly apply the appropriateness test and analysis enunciated in *IML*. In dismissing the application for reconsideration the Board stated:

...it must be recalled that the Employer is arguing against an all employee bargaining unit. While the Board has not said that by definition it is not possible to succeed with such an argument, certainly arguing against the appropriateness of an all employee bargaining unit is, to say the least, an uphill battle: see Original Decision, para. 139. What the Employer must establish is that the all employee bargaining unit is not an appropriate bargaining unit in the circumstances.

Fundamental to the approach in *IML* is the principle that "[i]n furtherance of industrial stability a single bargaining unit of all employees is preferable to multiple bargaining units": *IML*, p. 173. As well:

It is axiomatic in labour relations that a proliferation of bargaining units increases the potential for industrial instability. Multiple bargaining units *per se*,

raise a serious concern about industrial stability. Instead of one strike, there may be several strikes. Each union may potentially whipsaw the employer by trying to leapfrog the last set of negotiations. (*IML*, pp. 187-188)

These fundamental principles in *IML* are at the core of the Original Decision. The original panel in effect noted as much in concluding at paragraph 146:

It stands to reason that the greater the number of bargaining units, the greater the potential for numerous labour disputes to occur, potentially impacting patients of the health authorities, as well as the authorities themselves. I agree with the Board's statement in *PHSA* that "...two separate bargaining units also means that patients could be potentially impacted by two, rather than one, labour dispute". (para. 46)

We find the conclusion in the Original Decision is supported by the factual circumstances in the case: see Original Decision, paras. 140-143. We will deal below with the Employer's specific objection (noted above) to these paragraphs, but the facts in them provide a proper basis to reach the conclusion in the Original Decision consistent with the law and policy on appropriateness in *IML*.

As well, in this particular context of an application for an all employee unit, we find no error in the original panel's approach of asking whether the Employer had adduced compelling evidence to rebut the presumption in *IML* against the proliferation of bargaining units without specifically addressing the six *IML* factors in the manner argued for by the Employer. (paras. 9-13)

11 The fundamental issue in this case is thus whether the Employer has adduced compelling evidence to rebut the presumption in *IML* against the proliferation of bargaining units. Discharging this burden involves more than merely establishing that a less than all-employee unit would be "an" appropriate bargaining unit. For the following reasons I find that the Employer has not rebutted the presumption against the proliferation of bargaining units.

12 First, I do not accept the Employer's contention that, for present purposes, the general similarity of skills, duties and working conditions between the employees at the Salmon Arm and Gibsons facilities is of limited conceptual guidance. In *IML* the Board does state that the inherent flexibility of the first factor may provide only "limited conceptual guidance", however when the passage is read in context I take the Board to merely be making the point that *dissimilar* skills and interests no longer provide as much help as they once did in drawing a rational and defensible line around a less than all-employee unit:

During the 1940's, 1950's and 1960's, with unionization being primarily in the private sector, historical divisions took place which reflected a more traditional view of community of interest; i.e., the separation of white-collar from blue-collar workers. This distinction was often based upon gender, skills, or sometimes an unstated division based upon class. A plant would be separated from office; indeed, if the office was organized it may often have been to an entirely different union. However, in the late sixties, seventies and eighties, with the growth of public sector unions and the policy of a single, all-employee bargaining unit, these distinctions were no longer observed in the public sector. Indeed, today in British Columbia, an all-employee bargaining unit will include within one collective agreement widely different skills and terms and conditions of employment. In the public service, a master collective agreement combined with subsidiary component agreements will include groups as diverse as prison guards, conservation officers, senior financial officers, and social workers. Within the health-care industry, there are different professional groups with their own self-governing bodies (some national in scope and some established by statute), all included in the same bargaining unit. Traditional boundaries have been deliberately erased in favour of large bargaining units, which have proved viable in collective bargaining terms. So although similarities in skills, interests, duties and working conditions remain at a common-sense level a factor in community of interest, it may be of less help in drawing a rational and defensible line; its inherent flexibility may prove useful but provide only limited conceptual guidance. (pp. 180-181)

13 In my view this passage does not stand for the proposition that similarities in skills, interests, duties and working conditions are of limited conceptual guidance when the issue is whether an all-employee unit is appropriate. To the extent that the Board decisions cited by the Employer support such a proposition, I am not persuaded by the reasoning in them.

14 Second, although there are on-site managers at all the Employer's facilities and each facility has its own budget, accounting reporting structure and management, all of the managers report to, and when necessary seek direction and support from, a Regional Director of Operations in British Columbia. The managers also occasionally consult with each other. Moreover, the Employer has common policies and procedures for all its facilities.

15 Third, I do not accept the Employer's contention that "since there is no functional integration between Christenson Village, Hillside Village and Pioneer Lodge, the only rational, defensible lines which can be drawn are, first, around Christenson Village, and second, around Hillside Village and Pioneer Lodge together." While the presence of the functional integration of employees in several departments or facilities would ordinarily require that those employees be in one unit, the mere absence of functional integration does not in any way support the conclusion that an all-employee unit would be

inappropriate. As the Board observed in *The British Columbia Corps of Commissionaires*, BCLRB No. B66/2002 (“*Corps of Commissionaires*”):

I do not find that absence of functional integration to be greatly significant in itself. Functional integration is not a decisive factor in second or additional certification applications: *Costco Wholesale Canada Ltd.*, BCLRB No. B167/98, (1999), 49 CLRBR (2d) 92 (Upheld on reconsideration B220/98, (1999), 49 CLRBR (2d) 102), aff’d on judicial review (1999), 49 CLRBR (2d) 106. As that panel observed, it is not surprising that there is little or no functional integration with the other site sought to be varied in for otherwise the initial certification would not have been granted in the first place (at p. 23). (para. 97)

16 Fourth, while the Board in *IML* recognized that employees who are physically separated often develop and have a separate community of interest simply because of their physical separation it stated that “[t]his does not, however, justify multiple bargaining units with separate collective agreements at each location – either with the same union or different unions.” (p. 182)

17 I appreciate that in *Westburne Electric Supply (B.C.)*, a division of *Westburne Industrial Enterprises Ltd.*, BCLRB Letter Decision No. B54/95 (“*Westburne*”), the Board relied in part on geography to refuse to vary a unit of Lower Mainland employees to include employees in Kamloops. However the reasoning in that decision was expressly questioned in a subsequent Board decision: *Great Canadian Casinos Inc.*, BCLRB No. B356/99 (Upheld on Reconsideration: BCLRB No. B123/2000) (“*Great Canadian Casinos*”), at para. 16. In *Great Canadian Casinos* and two other Board decisions after *Westburne*—*Corps of Commissionaires* and *West Coast Waste Systems Inc.*, BCLRB No. B396/97—the Board granted variance applications despite the fact that the employees being varied into an existing unit worked at locations significant distances away.

18 In granting such a variance in *Corps of Commissionaires* the Board stated:

Assuming for purposes of argument the correctness of the Employer’s proposition as to the scope of the geography factor, I will consider only the geographical separation between Kelowna and the Williams Lake area...

There is significant geographical separation between those two work areas. However, the distance is not of great importance in itself at the second unit stage. In *IML* the Board stated that physical separation alone does not establish a defensible boundary in a second unit application:

Geography as a factor is also a straightforward issue. Employees who are physically separated, whether at different branches or outlets, often develop and have a separate community of interest simply because of their physical separation. Their

everyday work life is only with those employees at that one location. This does not, however, justify multiple bargaining units with separate collective agreements at each location - either with the same union or different unions. In addition, where there is a consistent managerial policy of interchange of employees (not simply holiday relief) between geographical sites, then the community of interest may well be the several geographic sites taken as a whole (at p. 25, emphasis added)

As the panel observed in *Coastal Ford Sales Ltd.*, BCLRB No. B393/95 (Upheld on Reconsideration BCLRB No. B431/95), that passage in *IML* quoted above confirms that the fact of geographical separation is not to be taken itself as justifying multiple bargaining agents and separate collective agreements. The significance of geography as a stand-alone factor depends on whether it is a first or second unit application. The degree of significance is different in each case: in the first, it is measured against ensuring access to collective bargaining and in the second, it is measured against industrial stability. As that panel stated, geography does not establish a defensible boundary without more in a second unit application (at p. 15).

Under a purposive inquiry, I question how geography would in these circumstances be an impediment to stable bargaining. How does that lack of proximity with which the employees work increase in this case the possibility for industrial relations instability? The only argument marshalled by the Employer as to why distance would present a barrier to stability was that the employees would not know of each other and may never have met. However, that may well be true of any site where commissionaires or guards and matrons work, whether they work within 5 miles or 50 miles of each other. The Employer's employees are all dispersed to different sites controlled by the third party client; none of them work out of the Employer's premises. In these circumstances, I do not consider geography to be a critical factor. (paras. 106-109)

19

I agree with this reasoning. Although the Employer relies on the distance between Salmon Arm and Gibsons it does not explain how this could give rise to industrial relations instability. In my view, doing what the Employer is not opposed to—issuing a second certification if the Union enjoys the requisite support in Salmon Arm—is much more likely to lead to industrial relations instability. As the Board stated in *IML*:

...It is axiomatic in labour relations that a proliferation of bargaining units increases the potential for industrial instability. Multiple bargaining units *per se* raise a serious concern about industrial stability. Instead of one strike, there may be several strikes. Each union may potentially whipsaw the employer by trying to leapfrog the last set of negotiations. Therefore, in regard to applications for

certification in relation to employers who have existing collective bargaining regimes, the *ICBC* factor of industrial stability must be given the greatest weight in the determination of what constitutes an appropriate bargaining unit. (pp. 187-188)

20 The Employer states that certifications and collective bargaining in the continuing care and assisted living sector involving employers like it that do not belong to the Health Employers Association of British Columbia are generally on a site-by-site basis. Even if this is true, while it may, as the Employer submits, favour separate certifications for its Gibsons and Salmon facilities, it does not, either by itself or in conjunction with the other facts the Employer relies on, constitute compelling evidence that the all-employee unit applied for by the Union is inappropriate.

21 Finally, the Employer states that it is a contract service provider in the health care industry and it submits that the Board has found that the bargaining structure of such providers should mirror the contracts they have with third parties. In making this argument it relies on *Compass Group Canada (Health Services) Ltd./Groupe Compass Canada (Services de Sante) Ltee*, BCLRB No. B194/2004, 107 CLRBR (2d) 55 (Upheld on Reconsideration: BCLRB No. B263/2005) ("*Renfrew*"). I am not persuaded by this argument for three reasons.

22 First, the Employer is not the sort of 'contract service provider' that the Board dealt with in *Renfrew*. In that decision the Board described what it meant by a 'contract service provider':

The contract service industry in British Columbia consists of companies such as Compass who enter into contracts with their clients to provide services such as food, laundry, housekeeping and maintenance *at the client's location(s)*. (para. 7, emphasis added)

23 Earlier, in *Sodexo MS Canada Limited*, BCLRB No. B104/2004—a decision quoted in *Renfrew*—the Board had stated:

The contract service provider sector is an evolving industry in B.C. as a result of Bill 29 which, among other things, allows health authorities to contract out certain non-clinical services, including janitorial/maintenance and food services. (para. 18)

24 In short, a 'contract service provider', as that expression was used in *Renfrew*, refers to a company providing contracted out non-clinical services at a health authorities' facility. The Employer is not a contract service provider in this sense. It provides clinical services at facilities it operates.

25 Second, although *Renfrew* was upheld on reconsideration, in the same decision the Reconsideration Panel upheld another decision by the same original panel (B200/2005) that had found a bargaining unit of Compass employees employed under two contracts appropriate for collective bargaining. Moreover, although the

Reconsideration Panel upheld *Renfrew* it issued this caution about the original panel's conclusion:

...In our view, it was open to the panel to conclude the proposed unit created collective bargaining and labour relations difficulties that put into question its appropriateness. However, while it was open to the panel to reach its conclusions, they should be seen as being limited to the specific facts of the case before the panel, including the corporate histories. As well, we agree with the original panel's comment that the concerns giving rise to the original panel's conclusions in this case may not be present in future cases. (para. 24)

26 Third, in decisions issued after *Renfrew*, including B200/2005 and *VIHA*, the Board has found multi-site certifications in the contract service provider sector to be appropriate; see, for example: *Simpe "Q" Care Inc.*, BCLRB No. B171/2006, 126 CLRBR (2d) 133 and *SerVantage Services Corp.*, BCLRB No. B109/2006 (Upheld on Reconsideration: BCLRB No. B140/2006).

V. CONCLUSION

27 For the reasons given above I find that the Employer has not rebutted the presumption in *IML* against the proliferation of bargaining units. Accordingly, I find that the unit applied for by the Union is appropriate and I order the ballots cast in the representation vote counted.

LABOUR RELATIONS BOARD

"G.J. MULLALY"

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VICE-CHAIR

