

BRITISH COLUMBIA LABOUR RELATIONS BOARD

SIDHU & SONS NURSERY LTD.

(the "Employer")

-and-

UNITED FOOD AND COMMERCIAL WORKERS
INTERNATIONAL UNION, LOCAL 1518

(the "Union")

PANEL: Ritu Mahil, Vice-Chair

APPEARANCES: Michael A. Watt, for the Employer
Emily J.M. Luther and Chris Buchanan,
for the Union

CASE NO.: 61043

DATE OF HEARING: September 13, 2010

DATE OF DECISION: September 14, 2010

DECISION OF THE BOARD

I. NATURE OF THE APPLICATION

1 The Union applies pursuant to Section 7 of the *Labour Relations Code* (the "Code") for an order that "the Union's representatives may access without restriction, including the Employer's prior permission or without express invitation by a member, the homes of Union members who reside on the Employer's property for the purposes of bargaining and conducting other Union business."

II. BACKGROUND

2 The Employer operates a wholesale nursery and blueberry farm at different locations around the Mission area. The Union is certified to represent all Seasonal Agricultural Workers Program ("SAWP") employees employed by the Employer. The Union and the Employer are currently bargaining towards a first collective agreement.

3 There are 30 SAWP employees presently employed by the Employer. The SAWP employees represented by the Union all reside on the Employer's property as per the terms and conditions of SAWP.

4 There are five staff housing units located on the Employer's premises at four different locations which house SAWP employees. The five staff housing units are at the following locations: Tremblay Island, Athey Road, Sylvester Road (two housing units) and Harris Road.

5 The staff housing is shared accommodation comprised of bedrooms, washrooms and kitchen facilities. There are no lounges or meeting rooms within the staff housing. The bedrooms are shared. There are no individual or private living areas. Kitchens are shared amongst the residents of each staff housing unit.

6 Earlier in the summer of this year, a representative of the Union attended at the Employer's property to pick up some members so that they could go to a barbeque. On July 13, 2010, the Employer sent a letter to the Union which stated:

We are writing to notify the Union that representatives of the Union are not permitted to attend on the Employer's premises including staff housing without the express approval in advance of the Employer. Anyone attending without approval will be treated as trespassing and removed from the property.

7 The Employer's policy is that it does not allow any unauthorized people on its property including in staff housing. This is done to protect employees' privacy and ability to rest and attend to personal matters without disruption. All employees are prohibited from drinking alcoholic beverages and smoking on the Employer's property.

8 The Employer has advised that it has arranged for the majority of SAWP employees to return to Mexico on September 23, 2010.

III. POSITIONS OF THE PARTIES

UNION'S POSITION

9 The Union submits that SAWP employees have a legal right to meet with their Union representatives in their residences without interference from the Employer. The Union states that it wishes to meet with the employees in their homes in private to address issues such as concerns about the existing working conditions, explaining to employees their rights in Canada, explaining to the employees about the Union and to discuss bargaining matters with the individual members. The Union submits that it has made this application so that it can attend the employees' residences without a prior invitation to meet with its members at their homes. It submits that given the members' circumstances, the requested order is necessary for situations in which the Union representatives are not invited.

UNION'S ALTERNATIVE POSITION

10 In the alternative, the Union argues that if the Board is to place restrictions on access, such restrictions should appropriately balance the interests involved. To this end it submits that two Union representatives per staff housing unit be allowed to enter the housing units for the purpose of contacting and meeting with the employees. It further suggests that an order restricting the times of access to when the employees are not working may be appropriate.

EMPLOYER'S POSITION

11 The Employer submits that an order for access is not necessary for the Union to conduct its business. The Union has shown that it is able to organize and conduct its business by meeting with SAWP employees off the Employer's property. The Union has an office located in Abbotsford, close to the Employer's location. This office is able to be used for meetings to conduct Union business. The Union is able to attend at the staff housing locations and pick up SAWP employees who attend meetings or community events elsewhere.

12 The Employer submits that given the shared bedroom and kitchen facility in the staff housing, there is no place to conduct meetings for Union business. The Employer submits the Board should not violate SAWP employees' privacy or create a captive audience for Union representatives.

13 The Employer further submits that there will be many SAWP employees who may not be interested in attending a meeting with the Union representatives to conduct Union business. Employees are entitled to their privacy in staff housing to recuperate from the work day and prepare for the next work day. This will include cleaning up, cooking and eating meals, making lunch in preparation for the next day and sleeping.

Employees are entitled to enjoy their privacy within the staff housing without being subjected to Union business. In the circumstances, the Employer submits that SAWP employees' privacy and the Employer's property rights should not be violated.

EMPLOYER'S ALTERNATIVE POSITION

14 In the alternative, the Employer submits that if an access order is granted then access should be limited to one location, no longer than one hour, once a week, attended by no more than two Union representatives and held outside the staff housing. The location for such access would be 10355 Sylvester Road outside the staff housing, or, in inclement conditions, in one of the empty buildings designated by the Employer on the Athey Road property.

IV. ANALYSIS AND DECISION

15 Section 7(2) of the Code states:

Limitation on activities of trade unions

(2) If employees reside on their employer's property or on property to which the employer or another person has the right to control access or entry, the employer or other person must on the board's direction permit a representative authorized in writing by a trade union to enter the property to attempt to persuade the employees to join a trade union and, if the trade union acquires bargaining rights, after that to enter the property to conduct business of the trade union.

16 The Employer submits that before an access order can be granted, the onus is on the applicant union to establish that employees reside on the employer's property and that access to the employees has been refused by the employer and is otherwise difficult or impossible because of the location of the property.

17 The Union's certification for the SAWP employees for the Employer was granted on February 9, 2010. In *Sidhu & Sons Nursery Ltd.*, BCLRB No. B26/2010, 176 C.L.R.B.R. (2d) 106 ("B26/2010"), the Board stated this with regards to the accommodation issues of the employees:

With regard to accommodation issues, I also find that the additional evidence tends to reinforce the distinctions between SAWP and domestic farm workers. While it is true both groups have access to accommodation provided by the Employer, SAWP employees effectively forfeit a portion of their compensation if they decline such accommodation, given that such accommodation is highly subsidized by the Employer. SAWP employees can elect to live off-site, but there is little incentive for them to do so. They do not have personal transportation to get to and from work each day. Their families live elsewhere, and therefore, they do not need accommodation beyond that required for their personal needs.

For those who live in Employer-provided accommodation, which constitutes the majority of SAWP employees, they have a number of unique and distinctive concerns that do not confront domestic farm workers. SAWP workers' landlord is also their employer. They do not get to choose with whom they live. They do not have their own furnishings nor make their own choices regarding utilities such as television, internet or telephone access, or many other aspects of their daily living environment. They cannot simply choose to move to other accommodations if they do not like the one to which they have been assigned. (paras. 40-41)

18 There is no dispute that the employees reside on the Employer's property. Given the Board's statements about employee accommodation in B26/2010 and the Employer's letter of July 13, 2010, I find that the Union has met the onus of establishing access to the employees has been refused by the Employer and is otherwise difficult or impossible because of the location of the properties. The onus now shifts to the Employer to show why the access order should not be granted (*Golden Bear Operating Company Limited*, IRC No. C146/90 ("*Golden Bear*") (p. 3).

19 In cases where an access order has been sought, the Board has applied the "equality of access" test as formulated in *H.S. Rai Farms Ltd.*, BCLRB No. 11/82, [1982] 2 Can LRBR 104 where the Panel stated "...the issue is not whether the employees have already had some exposure to the Union. The question in cases of this kind is whether the employees have less of an opportunity than employees who live off the farms" (p. 110).

20 The Employer accepts that the equality of access standard is the test to be met in access order cases. However, it disputes that what the Union seeks here is equality of access. The Employer submits that the Union is requesting unequal access. It argues that in the general community a union cannot go by forced entry into its members' houses and hold captive audience meetings as the Union seeks to do here. In addition to its arguments about captive audience meetings the Employer says an access order should not be granted out of concern for the employees' privacy.

21 I do not agree with the Employer's assertion that an access order under Section 7 would provide the Union with an unequal opportunity to meet and contact its members compared with those that do not live on an employer's property. In the greater community a union representative would be able to at least knock on members' doors and explain the reason for the in-person visit. It would then be up to the individual employee to decide whether or not to allow the union representative to enter his or her premises. There may be more than one employee living in a house together. Those individuals would engage in their own personal discussions and balancing of interests to decide whether or not the union representative could enter their joint home and speak to them. In the instant case, the Union is not asking to force itself into employees' homes without knocking. It is merely asking for the same access to these employees as it would have to employees whose homes are not on the Employer's property.

22 I note that all of the cases referred to by both parties involve situations where unions sought access orders for the purpose of organizing. In the instant case, certification has already been granted and the Union is the freely chosen representative of the employees. As the exclusive bargaining agent for the employees it is reasonable that the Union have some access to meet with, update and discuss bargaining issues with its members. This is particularly so given that the parties are in bargaining and a majority of SAWP employees are scheduled to return to Mexico before the end of September 2010. I am also cognizant of my duties under Sections 2(c) and (e) of the Code which require me to encourage the practice and procedure of collective bargaining and promote conditions favourable to the orderly, constructive and expeditious settlement of disputes. Accordingly, I find that it is appropriate to make an access order in this case. What remains to be determined is whether the order should include any restrictions.

23 The Employer's concern for the employees' privacy and for captive audience meetings for one or more employee in the staff housing unit who do not wish to speak to the Union representatives do not negate the appropriateness of an order. Rather, such concerns can be dealt with in deciding what restrictions should be placed on such an order, which I will deal with below.

24 The Employer's concern for captive audience meetings is addressed in the principle of equality of access. An order which provides the Union the right to knock on employees' doors, the same as it would for off-site employees' homes, must maintain the employees' right to deny entry if they did not wish to speak to the Union. The order is directed at the Employer's property; it does not direct employees to provide access into the individual housing units. That is up to the residents to decide free from Employer interference. I note that, as the Board stated in *Golden Bear*, "...it is very difficult and perhaps not even desirable to design an order which attempts to address every conceivable situation that might arise on the site. Provided the parties understand the theme or the spirit of the order, it is expected that they will conduct themselves accordingly" (p. 9).

25 The Employer submits that the SAWP employees have their own bicycles which they can use to travel to an off-site location for a Union meeting. It notes that the Union has an office located in Abbotsford which is a feasible place for the Union to meet with the SAWP employees to conduct Union business. Finally, in its alternative position, the Employer submits that an empty building on the Employer's property can be used to conduct weekly Union meetings.

26 Concern for the employees' privacy must also take into account the employees' right to meet with the Union away from Employer representatives. Accordingly, the Employer's alternative position of an Employer-designated on-site location for meetings is not appropriate in these circumstances. Instead, such concerns can be addressed by limiting the number of Union representatives per staff housing unit and the time and days in which such contact can occur.

- 27 Taking into account all the circumstances of this case, I order that:
1. The Employer must permit representatives authorized by the Union to have unsupervised and unrestricted access to the doors of the staff housing units for the purpose of contacting employees at their homes to conduct Union business, subject to the following.
 2. No more than two authorized representatives of the Union may approach and knock at a particular housing unit at one time. Resident employees have the freedom to permit or not permit Union representatives into their living quarters.
 3. Authorized representatives of the Union may attend the staff housing units between 6:30 p.m. and 10:00 p.m., Monday to Friday, except when invited by employee residents to visit their homes at other times.

V. CONCLUSION

28 The Union's application is granted. The order contained in this decision is to remain in place until the conclusion of bargaining, unless amended by further Board order. The parties are free to negotiate any different access provision they see fit for the ongoing administration of the Collective Agreement and conduct of Union business.

LABOUR RELATIONS BOARD

"RITU MAHIL"

RITU MAHIL
VICE-CHAIR