

Case Name:
Vancouver School District No. 39 (Re)

Between
British Columbia Public School Employers' Association
on behalf of The Board of Education of School
District No. 39 (Vancouver) (the "Employer"), and
Local 213 of The International Brotherhood of
Electrical Workers (the "Union")

[2007] B.C.L.R.B.D. No. 225

149 C.L.R.B.R. (2d) 55

BCLRB No. B225/2007

Case No. 56934

British Columbia Labour Relations Board

Panel: Ritu N. Mahil, Vice-Chair

Decision: October 1, 2007.

(25 paras.)

Appearances:

Chris Leenheer, for the Employer.

Patrick Dickie, for the Union.

I. INTRODUCTION

1 The Employer applies under Section 133 of the *Labour Relations Code* (the "Code") for orders and declarations directing the Union and its members to cease and desist from conduct contravening Part 5 of the Code by engaging in, and authorizing, an illegal strike.

II. BACKGROUND

2 The Employer is a school board pursuant to the *School Act*, R.S.B.C. 1996, c. 412. It owns and operates schools and properties within the City of Vancouver. The Union is a member of the Bargaining Council of Vancouver School Board Construction and Maintenance Trade Unions (the "Council"). There is a valid collective agreement in force between them. Accordingly, the Union is not in a legal strike position.

3 The Employer owns the property and buildings at Thunderbird Elementary School, 3375 East 8th Avenue, Vancouver ("Thunderbird Elementary"), including a portion of the building that is operated by the City of Vancouver as a community centre. The main building at Thunderbird Elementary consists of a school and community centre connected by an adjoining hallway through the gymnasium. The Employer contracts with the City of Vancouver to provide maintenance, repairs and servicing of the physical building in which the community centre at Thunderbird Elementary is housed.

4 There are two main access points to the community centre. One of those is through an outside entrance on Cassiar Street. The other is internally through a hallway between the school gymnasium and the community centre.

5 Employees of the City of Vancouver as represented by the Board of Parks and Public Recreation (the "Park Board") are members of the Canadian Union of Public Employees Local 15 - Vancouver Municipal, Education and Community Workers ("CUPE 15") and are lawfully on strike against the Park Board.

6 On August 31, 2007, the Employer sought and obtained common site relief from picketing by CUPE 15 members at Thunderbird Elementary. The August 31, 2007 Order (the "Order") states in part:

AND WHEREAS the Board is satisfied that it should restrict the common site picketing in such a manner that it affects only the operation of the Park Board and/or VPL whose employees are lawfully on strike;

AND WHEREAS the Board is satisfied that the Unions can and should be restricted from picketing at or near the Applicant at the common site.

NOW THEREFORE PURSUANT TO SECTIONS 65(6), 67, 133, AND 143 OF THE LABOUR RELATIONS CODE, THE LABOUR RELATIONS BOARD MAKES THE FOLLOWING ORDER:

At Thunderbird, the picketing is restricted on the North by the Lane adjacent to the playfield, on the East by Cassiar Street, on the South by 8th Avenue and on the West by the Lane adjacent to the grass playfield except for the sidewalk in front of the public doorway to the Thunderbird Community Centre to the North Lane, and at and around the portable building housing the daycare facility as identified in Appendix A.

7 In other words, the picketing is restricted to outside of those areas where CUPE 15 members performed work - the community centre and the daycare facility. The main entrance to the school is unencumbered by pickets.

8 The Employer is replacing the heating plant in the main building at Thunderbird Elementary. The major portion of the work for the heating plant replacement has been done by a contractor. Some of the work for this project requires the services of six electricians (the "Electricians") employed directly by the

Employer through the IBEW union hall. The Electricians are required for work on both the school side and the community centre side of the Thunderbird Elementary building.

9 Presently the heat can only be turned on or off in the school portion of the building but the controls required to regulate the temperature are not in place. The project is not yet at a point where heat can be turned on or off in the gymnasium or the community centre. At the hearing, Doug McClary, Manager Maintenance and Construction for the Employer ("McClary") testified that the Employer wishes to complete this project as soon as possible and normally it would be the Employer's aim to have the heat on by September. Accordingly, the Employer sought to put the Electricians to work in the building to complete the wiring necessary for the replacement project. He anticipated that they would be required to work for two weeks.

10 On September 19, 2007, McClary directed the Electricians to perform work in the portion of the building that is shared with the City of Vancouver community centre. The Electricians refused this work stating that the community centre was behind the CUPE 15 picket line. They were sent home without pay by the Employer. The Electricians have continued to refuse to work in the portion of the building utilized by the City of Vancouver which remains behind a picket line. McClary testified that the impact of the Electricians' refusal to work is that the contractor is being delayed in completing the entire project.

11 Harry Van Beest, Assistant Business Manager for the Union ("Van Beest"), testified that the Electricians called the Union office after being directed to work in the community centre. John Pesa, Assistant Business Manager for the Union, then called CUPE 15 to inquire whether the Electricians could access the community centre internally and work there. According to Van Beest, CUPE 15's response was "absolutely not."

12 The parties agree that CUPE 15 members have no jurisdiction over the work that the Electricians are being asked to perform.

III. POSITIONS OF THE PARTIES

13 The Employer submits that the Electricians' refusal to perform work as directed by the Employer constitutes an illegal strike. The Employer points to the definition of strike in Section 1 of the Code and to Part 5 of the Code to support this claim. The Employer further submits that the Order respecting common site picketing states that the CUPE 15 strike is not to impact upon or interrupt the operations of the Employer which is a neutral third party. The Employer submits that if the Board denies its application and allows the Electricians to continue to refuse to work as directed in the community centre portion of Thunderbird Elementary, it would render the common site relief granted in the Order meaningless.

14 Under the terms of the Order, the entrance to the school is free from picketing activity by CUPE 15. Accordingly, the Employer states that the Electricians are not being required to cross a picket line because they can access the community centre through the school gymnasium which links the two parts of the main building. McClary testified that the Electricians were never directed to cross a picket line. Rather, they were told to access the community centre internally. There are no pickets at the internal entrance. It is the Employer's position that it has the right to assign employees in any way it sees fit and should not be encumbered in any way.

15 The Union submits that though the Employer obtained common site relief on August 31, 2007, the community centre portion of the building remains a legitimate picketing site and that is where the Electricians are being directed to work. The Union submits that the Electricians cannot be engaged in an

illegal strike because the Code allows for an exemption to the definition of strike when a cessation of work is as a result of a legal picket line. The Union submits that the Board should not order people to cross picket lines. It further submits that it should not matter that there is internal access to the community centre portion of the building and the Electricians do not have to physically cross the picket line. The Union's position is that regardless of whether one accesses the work space through the external entrance by crossing the picket line or internally through the hallway connected to the school gymnasium, the fact remains that this part of the building is legitimately behind a picket line.

16 The Union further submits that Article 2.02 of the Collective Agreement gives Union members the right to refuse to cross a picket line without being disciplined by the Employer. The Employer disputes this interpretation. The Union submits that the Board should deny the Employer the relief it seeks because they have come to the Board with "unclean hands." In support of this argument, the Union submits that the Electricians were disciplined contrary to the Collective Agreement when they were sent home without pay, not reassigned to other available work when they refused to work in the community centre and this refusal was treated as an illegal strike.

IV. ANALYSIS AND DECISION

17 Section 1 of the Code defines "strike" as follows:

"strike" includes a cessation of work, a refusal to work or to continue to work by employees in combination or in concert or in accordance with a common understanding, or a slowdown or other concerted activity on the part of employees that is designed to or does restrict or limit production or services, but does not include

- (a) a cessation of work permitted under section 63(3), or
- (b) a cessation, refusal, omission or act of an employee that occurs as the direct result of and for no other reason than picketing that is permitted by or under this Code.

18 The Order does not prevent CUPE 15 from picketing the community centre portion of the Employer's building. The community centre is the site of legitimate strike activity.

19 Section 65(6) of the Code addresses two competing interests, the rights of striking or locked-out employees to picket at a place they normally work and the right of a neutral third party to be protected from the effects of a labour dispute. Accordingly, as a general proposition, I agree with the Employer's submissions that common site relief is granted by the Board to protect the activities of neutral third parties such as itself. However, the issue arising here is the scope of the Order. In that regard, the Employer essentially argues that it has already sought and obtained full relief from picketing at the site.

20 Section 133 of the Code provides the Board with a broad authority to provide relief that responds to the specific circumstances of a labour dispute before the Board. The relief granted is in respect of a particular breach of the Code. It is not clear to me either on the face of the Order or the map included as part of the Order that the parties or the Board ever turned their minds to whether employees or contractors of the Employer could access the community centre via the internal adjoining hallway that links with the school.

21 Given the nature of the competing interests arising under Section 65(6), the Order must be read in the context in which it was issued and not overly broadly. The date on which it was issued - August 31,

2007 - was only a few days before schools reopened. The instructions and maps included in the Order move the picketing away from the school entrances and restrict it to the community centre entrance and around the daycare annex. Accordingly, I conclude that the purpose and intent of the Order was to enable schools to reopen without school staff, parents and students having to cross a picket line. I am not satisfied that the Order contemplated the Employer carrying on work inside the community centre or anywhere else that is behind a picket line. That issue was simply not before the Board at the time of the Order.

22 CUPE 15's strike activity is the result of a legitimate strike. I accept that the Electricians have refused to cross the picket line as a direct result of this picketing activity. Accordingly, I cannot find that the Electricians' refusal to work is an illegal strike. Having concluded that, it is not necessary to decide whether Article 2.02 of the Collective Agreement gives the Union the right to refuse to cross a picket line. Similarly, it is not necessary for me to deal with the Union's "unclean hands" argument.

23 If the Employer wishes to secure access to the community centre for its employees and contractors through the school entrance, the Employer should apply to the Board for an amendment to the Order or seek a new order that names CUPE 15 as a party so it may have an opportunity to make submissions on a matter which may affect its picket line.

24 Both counsel referred me to a number of authorities which though I have considered fully I have not referred to in this decision in order to provide the parties with an expeditious decision.

V. CONCLUSION

25 The Employer's application is denied.

LABOUR RELATIONS BOARD

RITU N. MAHIL, VICE-CHAIR

cp/e/qlemo/qlhcs