

BRITISH COLUMBIA LABOUR RELATIONS BOARD

OVERWAITEA FOOD GROUP, A DIVISION OF GREAT
PACIFIC INDUSTRIES INC. AND PRICESMART FOODS

(the "Employer")

-and-

UNITED FOOD AND COMMERCIAL WORKERS
INTERNATIONAL UNION, LOCAL 1518

(the "Union")

PANEL:	Beverley J. Burns, Vice-Chair
APPEARANCES:	Keith J. Murray, for the Employer Chris Buchanan, for the Union
CASE NO.:	57751
DATE OF HEARING:	April 7, 2008
DATE OF DECISION:	April 8, 2008

DECISION OF THE BOARD

I. **NATURE OF THE APPLICATION**

1 The Employer applies under Sections 49, 57, 59, 60, 133 and 143 of the *Labour Relations Code* (the "Code") seeking declarations that:

- a) the Union is not in a legal position to take a strike vote among employees at converted PriceSmart Foods stores;
- b) any strike vote conducted among such employees is invalid; and
- c) any strike activity by employees at converted PriceSmart Foods stores will be a breach of Sections 57 and 58 of the Code.

2 The Union opposes the application and raised a preliminary objection that the matter was anticipatory and should not be dealt with until after the vote is taken. I will deal with the Union's preliminary objection in this decision. As this matter was heard on an expedited basis and an expeditious decision is being provided, only the facts necessary will be set out.

II. **BACKGROUND**

3 The Employer and the Union are parties to a collective agreement covering PriceSmart Foods stores (the "PriceSmart Agreement"). The PriceSmart Agreement covers the period November 16, 2004 to March 31, 2015, with a wage reopener provision in 2010.

4 The Employer and the Union are also parties to a collective agreement which covers Overwaitea Foods and Save-On-Foods stores (the "OW/SOF Agreement"). The OW/SOF Agreement expired March 29, 2008 and the parties are currently in bargaining to renew it.

5 The Union plans to hold a strike vote with respect to the OW/SOF Agreement. It has invited employees at the PriceSmart Foods stores to participate in the vote on April 9, 2008. The Employer objects to these employees participating in the vote.

III. **POSITIONS OF THE PARTIES**

6 The Employer applies pursuant to Sections 133 and 143 of the Code for several declarations. It argues that the proposed strike vote will violate Sections 59 and 60 of the Code.

7 The Employer states that the parties have not engaged in collective bargaining for the PriceSmart Agreement and therefore, holding a strike vote with PriceSmart Foods employees would be a violation of Section 59 of the Code. In addition, the Employer argues that including PriceSmart Foods employees in a strike vote concerning the OW/SOF Agreement is a violation of Section 60 of the Code, because those employees are not employees in the affected unit.

8 The Union objects to the declarations and argues that the Employer's application is anticipatory. It argues that Labour Relations Board Rule 31 applies to strike votes and precludes the Employer's application.

9 In particular, the Union states that a strike vote is an internal Union matter and the Board does not get involved until after the vote is held. The Union argues that pursuant to Regulation 13, the returning officer determines voter eligibility and only after that does the Board review the vote.

10 The Union also argues that it may be unsuccessful in achieving a mandate to strike through the strike vote. It states that should this occur, the Employer's application would be moot and therefore, the Board should not adjudicate this matter until after the vote has occurred.

11 The Union argues that the Board should only get involved when and if, the Union acts on the vote. Before that point, the Union states it is an internal Union matter and the Board should not interfere.

12 Finally, the Union argues that waiting until after the strike vote is held will prevent a multiplicity of proceedings.

13 The Employer agrees that this application is anticipatory, but argues that such an application is not unusual. It states that in many Part 5 cases, the Board has rendered anticipatory declarations.

14 The Employer argues that there are two conditions for an anticipatory declaration:

1. the facts must have sufficiently crystallized; and
2. there is a labour relations purpose to issuing the declaration.

15 The Employer states that these two conditions have been met in this case. It states that the Union's offer to PriceSmart Foods employees to vote is sufficient to crystallize the matter for a declaration. In addition, the Employer states that, from a labour relations perspective, it would be absurd to require the Employer to return after the vote and seek its remedy.

16 The Employer argues that delaying the decision in this case will lead to stress and uncertainty in the workplace, as employees will be uncertain as to whether they have the right to participate in the strike vote.

17 Finally, the Employer argues that Section 2 of the Code requires the Board to act in a manner that encourages the practice and procedures of collective bargaining between employers and trade unions and promotes conditions favourable to the orderly, constructive and expeditious settlement of disputes. As a result, the Employer argues, it would be inappropriate to delay the decision in this matter.

IV. ANALYSIS AND DECISION

18 Under Section 143, the Board has the discretionary authority to issue anticipatory declarations. Such declarations are not made on a routine basis, and they are only made where the facts are sufficiently crystallized. An assessment of whether the facts are "sufficiently crystallized" is a factual determination, to be assessed in the context and circumstances of each individual case. In addition, there must be a valid labour relations purpose to justify the exercise of declaratory powers with respect to anticipated events: *First Commercial Management Inc.*, BCLRB No. B213/93.

19 Turning to the Employer's application with respect to Section 60, Section 60(1) and (2) of the Code state:

- (1) A person must not declare or authorize a strike and an employee must not strike until a vote as to whether to strike has been taken in accordance with the regulations by the employees in the unit affected, and the majority of those employees who vote have voted for a strike.
- (2) If on application by a person directly affected by a strike vote or an impending strike, or on its own behalf, the board is satisfied that a vote has not been held in accordance with subsection (1), the board may make an order declaring the vote of no force or effect and directing that if another vote is conducted, the vote must be taken on the terms the board considers necessary or advisable.

20 Section 31(2) of the Labour Relations Board Rules states:

Applications to the board under Section 60(2) or 61(2) of the Code shall

- (a) comply with Rules 2(2) and 2(3) in particular; and
- (b) *be made within five (5) working days* after the date on which the return of poll is filed with the board, or such longer period as the board may permit. (emphasis added)

21 The strike vote has not yet taken place. As such, the application does not comply with Rule 31(2)(b) because it is premature. Even if I were to relieve against this Rule, I find that the facts have not sufficiently crystallized at this time. We do not yet know which employees voted, the procedure used to hold the vote or the results of the

vote. In my view, all of these facts are important to consider when determining whether to issue the declarations requested by the Employer.

22 As a result, I find that with respect to the Section 60 application, the matter is premature.

23 With respect to the Employer's application under Section 59, Section 59(1) of the Code states:

A person must not take a vote under section 60 or 61 on the question of whether to strike or on the question of whether to lock out until the trade union and the employer or their authorized representatives have bargained collectively in accordance with this Code.

24 Rule 31 does not apply to an application made pursuant to Section 59 of the Code. There is no time limit set out in the Rules with respect to an application under Section 59.

25 While the facts may be sufficiently crystallized in this case to make a decision with respect to whether or not the parties have bargained collectively in accordance with the Code, I do not find that there is a labour relations purpose to issuing an anticipatory declaration before the vote occurs. The parties will undoubtedly return to the Board if the strike vote proceeds and the Union is successful in obtaining a strike mandate. At that time, the Board can deal with the issues raised by the Employer under Section 59.

26 This result is consistent with Section 2 of the Code in that the parties will have an orderly and constructive settlement of this dispute. They will have the full benefit of all the facts to make their arguments to the Board, should the matter come back before it. At that time, the Board will be able to make a more informed decision.

27 The Employer can bring this matter back before the Board on an expedited basis once the facts have crystallized. Should the Employer choose to do so after the strike vote is held, the Board will hear the application within a matter of hours of the application being filed.

V. CONCLUSION

28 For the reasons set out above, I decline to exercise my discretion to issue the declarations sought.

LABOUR RELATIONS BOARD

"BEVERLEY J. BURNS"

BEVERLEY J. BURNS
VICE-CHAIR