BRITISH COLUMBIA LABOUR RELATIONS BOARD

THE ASSOCIATION OF BRITCO EXPORT PACKERS LTD.
n.k.a.
THE ASSOCIATION OF BRITCO PORK INC. EMPLOYEES

(the “Association”)

-and-

UNITED FOOD AND COMMERCIAL WORKERS
INTERNATIONAL UNION, LOCAL 1518

(the "Union")

-and-

BRITCO EXPORT PACKERS LTD.
n.k.a.
BRITCO PORK INC.

(the "Employer")

-and-

CERTAIN EMPLOYEES OF
BRITCO PORK INC.

(the “Certain Employees”)

PANEL:	Bruce R. Wilkins, Associate Chair, Adjudication
APPEARANCES:	John Brisco, for the Association Greg R. Anctil, for the Employer Brett Matthews, for the Union Certain Employees, for themselves
CASE NO.:	67818
DATE OF DECISION:	December 5, 2014

DECISION OF THE BOARD

I. NATURE OF THE APPLICATION

1 The Union applies under Section 37 of the *Labour Relations Code* (the "Code") for a declaration that the Union is the successor union to the Association. The Employer and Certain Employees oppose the merger.

II. BACKGROUND FACTS

2 The parties dispute the nature of the Association. The Employer contends the Association is a society incorporated under *The Society Act* [RSBC 1996] Chapter 433 (the "Act"). It says the by-laws of the Association are those standard form by-laws found as a schedule to the *Act*. The Union contends the Association is a trade union under the Code and is not a society. The Board's records demonstrate the Association was granted a certification on June 19, 1996. The Employees Association has executed a number of successive collective agreements with the Employer and has appeared before the Board in a number of hearings. The parties do not dispute the Association is subject to a collective agreement.

3 On October 20, 2014 a notice was given to employees of a vote to occur on October 22, 2014. The Notice said the following:

> Take notice that a vote will be held at Wednesday, October 22, 2012 at 12:30 PM to 5:00 PM time, at WC Blair Recreation Center, 22200 Fraser Highway at which employees will be asked to approve the proposed merger of the Association of Britco Pork Inc. Employees with the United Food and Commercial Workers Union, Local 1518. If approved by the majority of voting employees, the UFCW 1518 will apply to be named the successor to the Association of Britco Pork Inc. Employees, which would result in the UFCW 1518 becoming the exclusive bargaining agent of Britco Pork Inc. (the "Notice")

4 On October 22, 2014, the Union circulated a document (the "Voting Day Document") which had a heading at the top which read "Together we are strong". Underneath this was written "when we vote yes we will have more people behind us. Together we will be stronger". A sample ballot was included on the document which said " I approve of a merger between THE ASSOCIATION OF BRITCO PORK INC. EMPLOYEES and the United Food and Commercial Workers' Union Local 1518", with squared to check indicating "yes" or "no". The document asked employees to "vote yes today" and gave the time and location of the vote, which was held at a recreation centre

from 12:30 until 5:30pm. The Voting Day Document included a section entitled "facts about finances" which said the following:

> We need to join with other food workers because we need an organization that is financially strong and has resources to hire lawyers, professional negotiators, conduct arbitrations, and represent workers at Britco.
>
> -The association will pay dues for all individual members using the funds the association already has. Meaning individually you pay no dues.-Once the association has used the funds it has remaining (approximately 7 months), individual dues will be the industry standard $12.75 per week.

5 The Union and representatives of the Employees Association also had officials present outside of the voting place to answer questions and had Vietnamese speakers ready to translate.

6 The Association's by-laws say, among other things, that a general meeting must be held in accordance with the Act. The Act says a society must give 14 days' notice of a general meeting.

7 At the vote, the Employees Association's members voted in favour of the merger by a 104 to 88 margin. There are approximately 260 employees in the unit. Thirty-four (34) employees were absent from the workplace because of vacation, WCB, sick leave or other scheduled absences on at least one day of the dates October 20, 21, or 22 of 2014. 28 of those were also absent on the date the notice of the vote was posted.

8 This matter is one in which time is of the essence because the collective agreement expires on December the 10th, 2014. As a consequence, I am providing brief reasons. I find I can dispose of this matter without an oral hearing.

III. ARGUMENT

I. The Employer

9 The Employer says there was little or no opportunity for the employees to determine the relevant issues surrounding the proposed merger or to make informed decisions. It says two days' notice was insufficient.

10 The Employer submits the process of the vote was conducted in contravention of the constitution and by-laws of the Association made pursuant to the Act. It says the Act requires 14 days' notice of a general meeting. It says the by-laws state that notice

must be given to members personally or by mail at their registered address. It says the fact many employees were not even present at work on either the day of notice or the day of the vote proves any meeting was not properly constituted. It says in order for an amalgamation to occur, according to the Association's by-laws, 14 days' notice to members and a vote of 75% in favour of the motion would be required.

11 The Employer says the five factors the Board considers were adopted in *College of New Caledonia*, BCLRB No. B190/2009, 170 C.L.R.B.R. (2d) 1 ("*New Caledonia*") and are as follows:

- the sufficiency or adequacy of notice of a vote regarding the merger issue;
- whether the process by which the authorization was received from the members was organized by a duly elected executive;
- whether, if a vote was held, it was reasonably available to all members;
- whether relevant information was made available to them; and
- whether there was a *bona fide* opportunity by members to express their views and democratically demonstrate their wishes.

12 The Employer argues two days' notice was inadequate. It says the vote was not reasonably available to all of the members, who could have changed their plans with more notice. Given the margin of the win in favour of the motion the Employer says this is a significant factor. The Employer says the employees appear to have had no opportunity to obtain relevant information from the Association, nor to ask any questions about the proposed merger before the vote. It submits there were no meetings to debate the issue; it says there was a complete failure to provide relevant information to the employees to allow them to vote in a meaningful or informed manner.

II. Certain Employees

13 Certain Employees say they heard nothing about the merger before the Notice was handed out on October 20, 2014, although they say they had heard of the Association talking of a merger in the past. They say they do not feel the employees had enough time to get information about the merger before having the vote.

14 Certain Employees say it was highly unfair that the vote was held on such short notice without getting the proper information, and feel the merger was forced upon them. They expressed their concerns to the Employer and began a petition to let the

Association know they are not happy about the process. The petition itself expresses two concerns: the lack of notice for the vote, and the lack of a detailed explanation for the proposed merger. Certain Employees agree with the Employer's submissions.

III. The Union

15 The Union disputes the Employer's contention that the Association's by-laws require a general meeting (with two weeks' notice) to approve a merger. In any event, the Union says the Employer has no standing to make such an argument.

16 The Union says the Certain Employees' petition is irrelevant, and the Board should not consider it. It says the Employer encouraged and participated in the process of completing the petition.

17 The Union argues the Association and the Union are trade unions under the Code, and the Act has no application to the matter; it says only the Code applies with respect to the matter before me. It argues, in any event, that the Board does not police a union's compliance with its constitution and by-laws in Section 37 applications: *Construction, Maintenance and Allied Workers Union, Local 2020*, BCLRB No. B106/2012 ("*CMAW*").

18 The Union submits the Notice was adequate. It says the fact that approximately 74% of the employees voted proves the Notice was sufficient. It says employees were made aware of the location of the time and location of the vote and the question to be voted on. It argues the employees had sufficient time to arrange to attend and cast a ballot. The Union says the Board itself often sets down votes in certification applications on less than two days' notice. It says the fact some members were absent on the day of the Notice and the day of vote should not invalidate the vote.

19 The Union argues the Employer has unclean hands. It accuses the Employer of confiscating the posted notices and removing them from notice boards. The Union says it countered the Employer's actions through handing out notices outside of the workplace and by contacting members via telephone and through plant leaders.

20 The Union says the Employer does not say what information was not available to the employees. It says employees had full information and could not be confused as to the nature of the vote. The Union says it has met the five factors referenced in *New Caledonia*.

IV. ANALYSIS AND DECISION

21 I have chosen to adopt the approach set out in *Various Employers*, BCLRB No. B102/2002 in the disposition of this matter:

> The Board views mergers and transfers of jurisdiction between unions essentially as internal union processes and ones into which the Board is very reluctant to intervene by second guessing the judgement of the membership.
>
> A fundamental purpose of the Code identified in Section 2(1)(a) is that a union is to be the freely chosen representative of employees. Accordingly, in an application under Section 37, the Board will need to be satisfied the transfer is legitimate in the sense it is consistent with that fundamental principle.
>
> The intent of Section 37 is simply to have the Board, as an independent body, review the process by which a merger or transfer has occurred, and if satisfied of its legitimacy, to approve it. The effect of a declaration under Section 37 is that one union is substituted for another in a collective bargaining relationship and the collective bargaining rights, duties and privileges of the predecessor are passed to the successor.
>
> The focus under Section 37 is not on a union's internal structure and inter-relationships of the members but rather on whether members have been provided an adequate opportunity to express their wishes regarding a transfer. (paras. 96-99)
>
> …
>
> The Board's approach under Section 37 is a flexible one, based on labour relations common sense and focusing on the adequacy of notice and the extent to which affected members have had an opportunity to express their wishes. As a result, flaws which may constitute even significant technical flaws in proceedings before court, may not preclude the issuing of a Section 37 declaration. (para. 149)

22 I find the arguments concerning whether the Association is a Society and the requirements of the Act are not determinative of the question before me under section 37 of the Code. I choose to follow *CMAW*, in which the Board said the following:

> The Board's administration of Section 37 is purposive. It is aimed at determining whether an applicant is the successor for the

> purpose of acquiring a predecessor's rights under the Code. It is not a vehicle for policing compliance with the respective constitutions and by-laws –that is a matter for a court to decide. (para. 13)

23 What concerns me in this matter is the law and policy of the Code under Section 37. I add the Board's records clearly identify the Association as a trade union under the Code, and reflect the Board has granted a certification to the Association, conducted hearings and made decisions identifying the Association as a trade union under the Code. The Association has concluded collective agreements with the Employer. For the purposes necessary to the disposition of this matter, the Association is a trade union under the Code.

24 I find the most compelling evidence in front of me is the large turnout for the vote. Out of approximately 260 members, 190 voted in the poll. This is a healthy turnout and, in my view, demonstrates that the Notice was effective. I add that for certification applications, Section 24 of the Code indicates that 55% turnout for a vote is considered adequate to dispose of the issue of union representation, and that even if there is less than a 55% turnout, it is a discretionary matter whether the Board should order another poll. In the matter before me, well over 55% of the employees voted.

25 The large turnout for the vote is strong evidence the Notice was effective, and the employees had a reasonable opportunity to vote. I recognise there were people absent from work on both the day of the Notice and the vote due to vacation, WCB, illness or other scheduled leaves. In any vote some may not vote for a variety of reasons. The fact that a minority did not vote and some may have missed the Notice altogether is not a reason to nullify the results of the vote. I note where votes are held under the Code with respect to union representation, those votes are typically conducted within a tight time frame. The general practice under the Code is to conduct votes quickly and without unnecessary delay. To find the vote required 14 days' notice in the matter before me would fall well outside of the norm for votes under the Code.

26 With respect to whether the Employees knew the reason they were voting, I find the Notice is very clear concerning the nature of the question to be determined in the vote. None of the materials distributed by the Union were misleading in any way. The results of the vote, being 104 in favour and 88 against, suggest the employees were somewhat divided on the issue but had the opportunity to express their wish with respect to a clearly expressed question. I conclude the employees had a real opportunity to express their views and to democratically demonstrate their wishes.

27 The Employer and Certain Employees do not argue the process was not organized by a duly elected representative of the Association. In its argument the Employer states its understanding that the notice of the vote was distributed by members of the Association's executive.

28 In summary, with respect to the factors listed in *New Caledonia*, I find as follows: the notice of the vote concerning merger was adequate; the question of whether the process was organized by a duly elected representative is not in dispute between the parties; the vote was reasonably available to the members; the members had the relevant information necessary to vote; and, there was a real opportunity for the members to express their views and democratically demonstrate their wishes.

V. CONCLUSION AND DECLARATION

29 I dismiss the objections made by the Employer and Certain Employees with respect to the Union's merger application. I declare the Union to be the successor union to the Association under Section 37 of the Code with the effect the Union has acquired the Association's rights, privileges and duties under the Code.

LABOUR RELATIONS BOARD

"*BRUCE R. WILKINS*"

BRUCE R. WILKINS
ASSOCIATE CHAIR, ADJUDICATION