BRITISH COLUMBIA LABOUR RELATIONS BOARD

CARECORP HOLDINGS INC. CARRYING ON BUSINESS
AS CARECORP SENIOR SERVICES

("Holdings")

-and-

0894045 B.C. LTD.

("Numbered Company")

-and-

HOSPITAL EMPLOYEES' UNION

(the "Union")

PANEL:	Richard S. Longpre, Vice-Chair
APPEARANCES:	J. Najeeb Hassan, for Holdings and Numbered Company David Tarasoff, for the Union
CASE NOS.:	67537 and 67591
DATE OF DECISION:	October 1, 2014

DECISION OF THE BOARD

I. INTRODUCTION

1 The Union seeks a declaration pursuant to Section 38 of the *Labour Relations Code* (the "Code") that Holdings and Numbered Company (who will also be referred to as the "Employers") are a common employer. The Union also seeks a declaration that the Employers are in breach of Section 11 of the Code by failing to bargain in good faith. In response, the Employers seek a declaration that Numbered Company is the true employer and that the Union's common employer declaration and bargaining in bad faith applications be dismissed.

2 In a case management meeting on September 16, 2014, the parties agreed their respective written submissions addressed all outstanding issues and that a hearing was not necessary. The parties are in collective bargaining for a first agreement and ask that the decision be issued expeditiously.

II. BACKGROUND

3 Inglewood Private Hospital Ltd. ("Inglewood") operates a seniors facility in West Vancouver. In March 2010, the Employers entered into a contract with Inglewood to provide services, such as licensed practical nurses, cooks, maintenance workers, care aides, porters, food service and laundry workers. In November 2013, the Union was certified to represent the Employers' approximately 250 employees working at Inglewood. The Union's Inglewood certification sets out Holdings as the certified employer. It reads, in part: "employees at Inglewood Care Centre…employed by CareCorp Holdings Inc. carrying on business as CareCorp Senior Services, 1035 Quail Drive, Kamloops". 1035 Quail Drive, Kamloops is the home of Bobby Sangha, the Principal of Holdings and Numbered Company.

4 In November 2013, the Union issued Holdings notice to bargain. Collective bargaining commenced on January 29, 2014 and continued for several days throughout February, April, May, June and July 2014. A mediator was brought in to assist the parties. On May 29, 2014, the Employers tabled a "Comprehensive Settlement Package". The Employers' proposed rates of pay that were less than the rates offered by the previous Inglewood contractor and less than the rates the Employers pay at other locations at which it is contracted to provide similar services. The Union took a strike vote.

5 From the outset of bargaining, the Union requested Holdings provide it with employee contact information and an accurate seniority list. The Employers acknowledge that the information provided to the Union up to now, has not been accurate. This was in part due to the fact the previous contractor had not maintained accurate employee information. It has been difficult for the Employers to correct the employee information and provide it to the Union. As I understand from the

submissions, the Employers have been trying to improve on the employee records accuracy, however, problems continue.

6 Returning to collective bargaining, the Employers argued that their Comprehensive Settlement Package was based on their ability to pay. The Union requested that the Employers provide their financial information that supported that position. The Employers responded by providing financial information on Numbered Company. That was the first time the Union was made aware of the existence of Numbered Company and the first time the Employers raised the distinction between Holdings and Numbered Company. In discussions that followed, the Employers explained that Numbered Company and not Holdings, was engaged in the activities of Inglewood.

7 The Union found that the information provided to it – employee contact information, employee seniority lists, and financial information – failed to comply with the requirements under the Code. The Union filed its application with the Board on July 30, 2014.

III. ARGUMENTS

8 In its July 30, 2014 submission, the Union argues that the first three elements of the common employer test are met: Holdings and Numbered Company are both carrying on business, they are under common control and direction and are engaged in associated or related activities. The Employers do business as CareCorp Senior Services: "[b]usinesses run like separate operations within the same overall corporate structure can constitute a common employer; *Vancouver Airport Centre*, BCLRB No. B170/2013". The Union argues the labour relations purpose was evident in collective bargaining. Its submission reads:

> Clearly, Bobby Sangha seemingly uses the Numbered Company and the Employer interchangeably to do business at Inglewood, to the point where the Numbered Company is identified as the employer on employee pay stubs. Properly understood and defined, the employer at this site is not merely the Employer, it is the Employer and the Numbered Company. A common employer declaration recognizes and formalizes this fundamental labour relations reality.
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> A common employer declaration will allow the Union to bargain with the entity which actually does business at Inglewood and enable it to examine the common employer's genuine financial picture in full. As things now stand, the Numbered Company is not bound by the collective agreement and yet, information about that entity is tabled in support of claims made at the bargaining table by the Employer about its alleged financial plight. Surely this is intolerable (absurd, even) and warrants a declaration.

9 As for its Section 11 application, the Union notes that the Employers' Comprehensive Settlement Package is based on ability to pay. When asked to disclose

the financial information that supports the position, the Employers produced Numbered Company information and not Holdings' information. The Union argues, "[a]t best, this impedes the process because it calls into question who or what the Union is dealing with at the bargaining table".

10 The Union notes that in *Port Transport Inc.,* BCLRB No. B50/2011, 193 C.L.R.B.R. (2d) 215 and *P. Sun's Enterprises (Vancouver) Ltd.,* BCLRB No. B388/2003 (Leave for Reconsideration of BCLRB No. B301/2003), 99 C.L.R.B.R. (2d) 120 the Board required, with few exceptions, employers to provide business information requested by the union. The Union has repeatedly asked the Employers for employee contact information. The fact the Employers continue to supply inaccurate information demonstrates the Employers' breach of Sections 6(1) and 11 of the Code.

11 The Employers argue Holdings and Numbered Company are not engaged in associated or related activities or business. Holdings has not carried on any business since at least 2010 and now exists as nothing more than a shell company. There is also no labour relations purpose as Numbered Company is the true employer. Holdings does not employ anyone associated with the Inglewood contract or any of its other contracts carrying on business as CareCorp Senior Services. It was an error to place Holdings on the Inglewood certification and that mistake should now be corrected.

12 The Employers argue Numbered Company is not bargaining in bad faith. There have been a significant number of days of bargaining and a number of articles in the first agreement have been resolved. The Union requested the financial information that supports the Employers' ability to pay argument at the bargaining table. The Union was provided with Numbered Company's financial information. As for the employee information requested by the Union, the Employers note that this concern was never raised in the months the parties were in collective bargaining. Incorrect information provided to the Union was "inadvertent, [and] not intentional". It has taken time for the new managers to be comfortable with the previous contractor's payroll and record keeping system. The Employers say that most of the requested information has been provided – the Employers will provide the remaining information, in due course.

13 In its September 5 and 11, 2014 reply submissions, the Union argues the true employer application does not succeed as "there is one business being carried on by two commonly controlled legal entities". On the other hand, the common employer declaration will "promote meaningful collective bargaining". The Union argues:

> In *Columbia Hydro Constructors*, BCLRB No. B36/94, 22 CLRBR (2d) 161, the Board thoroughly reviews the factors that apply to determine the identity of the "true employer" of employees; see pages 197-210. It is at least implicit in this discussion that in such cases, the Board determines which of two quite distinct entities is the true employer e.g. subcontractor or general contractor. The Board observes as follows:
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> > The case authorities also reveal that adjudicators have attempted to determine which party is the

> employer by trying to answer two related questions: (i) into which organization or undertaking are the employees integrated? and (ii) which organization or undertaking holds fundamental control over the employees? These questions are not really different. One focuses the inquiry on the employees, the other on the alleged employer. To answer the questions, the presence or absence of the various *indicia* set out in *York Condominium* are relevant (p. 200).
>
> These questions make no sense if, as here, there is no meaningful distinction between the two entities. Any distinction alleged between the Employer and the Numbered Company is pure artifice. Again, Bobby Sangha cannot disavow any role as Employer and then insist that in fact, Bobby Sangha is the true employer. It makes no sense to wonder which of two organizations exercises fundamental control over the employees when any distinction between them is a legal fiction.

The Union argues there is "no meaningful differences" between Holdings and Numbered Company and it is a "legal fiction" for the Employers to suggest otherwise.

14 The Union notes the Employers argue that Holdings is not an active company. The Union argues that since 2010, there have been applications for certification at three Holdings locations; Inglewood, New Horizons in Campbell River, B.C. and Sunridge Place in Duncan, B.C. Holdings was the named Employer on each of these applications and did not raise the existence of Numbered Company in any of the applications. The last application was addressed by the Board in August 2014 – after the instant application was filed. The Employers were content to present themselves at the Board as Holdings until it was required to provide the Union with financial information. The Board should not allow the Employers to limit the scope and accuracy of that financial information through the true employer argument.

15 The Union argues the Employers' reasons for not presenting the requested employee contact information and the seniority list are much less than credible. It is time for the Board to direct the Employers to provide the Union with the requested information.

16 In their September 15, 2014 reply, the Employers argue that Numbered Company is clearly the true employer. Their submission reads:

> There is a real and substantial difference between the two companies. The undisputed fact is that Holdings does not carry on any business and does not employ the employees. The Union does not dispute that the employees receive paycheques from the Numbered Company or that the Numbered Company is the entity which has a commercial contract with Inglewood Care Centre. It is under that commercial contract that the employees in question provide services.

17 The Employers acknowledge the certification was issued incorrectly and say that the purpose of their true employer application is to correct that mistake. Their submission reads "[t]he Code provides for successor employer declarations, common employer declarations and true employer declarations. Each should be used in the appropriate circumstances". In this case, Numbered Company is party to the commercial contract with Inglewood – Holdings is not. Numbered Company employs and pays Inglewood employees – Holdings does not. Their submission reads:

> A true employer declaration will ensure that the entity that (i) has that contract and the revenue from the contract; (ii) which pays the employees (and therefore bears the burden of remuneration) and; (iii) which therefore controls the means to address or reject the Union's bargaining demands is the one on the certification. That should be the Numbered Company, not Holdings.

IV. ANALYSIS AND DECISION

18 I start with the Union's common employer application. There is no dispute that Holdings and Numbered Company are separate companies under common control and direction. Two remaining issues need to be addressed: are Holdings and Numbered Company in associated or related activities or business and is there a labour relations purpose for such a declaration.

19 I start with whether there is a labour relations purpose. It is well recognized that "rationalizing bargaining unit descriptions and ensuring a more orderly form of negotiations and administration of a collective agreement are valid labour relations purposes" (*Ferraro's Limited*, BCLRB No. B132/97 at para. 48). The Employers have based the Comprehensive Settlement Package on their ability to pay. When asked to provide financial information to support this bargaining position, the Employers provided Numbered Company's Profit and Loss Statement. The labour relations test is met by the fact that while the Inglewood certification describes the unit as employees of Holdings, in negotiations the Employers say Numbered Company's financial information establishes their bargaining position. If Holdings and Numbered Company are a common employer, Holdings' financial statements should have been provided and that may have an affect on negotiations.

20 The issue is whether Holdings and Numbered Company are in associated or related activities or businesses. The Board has interpreted this test broadly; in this case, the question is whether Holdings performs any related activities or businesses. The Union relied on its applications for certification at Inglewood, New Horizons, and Sunridge Place – all of which set out Holdings as the Employer. The certification of Holdings on two of these applications was not challenged by the Employers. The Union notes that the Employers raised the true employer application only after they were required to provide financial information – this should be viewed as an attempt to narrow the financial information they provided. I agree these are valid points but are outweighed by the facts that establish that Holdings is not an associated or related business to Numbered Company.

21 The fact Holdings and Numbered Company have the same corporate address does not establish that Holdings is in associated or related activities or businesses. Numbered Company employs approximately 250 Inglewood employees and is responsible for their supervision, payment of wages and collective bargaining. The commercial contract to provide the services at Inglewood is between Numbered Company and Inglewood. I accept the Employers' argument that Holdings is a "shell" company engaged in none of these activities. Holdings' other seniors facilities operate under the name CareCorp Senior Services and each is a numbered company. Holdings is not signatory to any of the service contracts at these other locations, and does not hire these employees nor pay their wages. As the Employers' argument states: "The undisputed fact is that Holdings does not carry on any business and does not employ the employees".

22 The Inglewood certification was issued to Holdings. The Employers argued that, notwithstanding Numbered Company was represented by counsel in all Board proceedings, the Employers erred in not raising the true employer issue in the applications for certification and related Board proceedings. That is a surprising error but not one that can be ignored in determining whether Holdings carries on a business under the name CareCorp Senior Services. From the submissions, there is nothing to refute the Employers' argument that Holdings is a "shell" company and that the actual operations under each contract is carried out under a series of numbered companies.

23 It follows that Numbered Company is the true employer at Inglewood and that the Union's certification should be amended to read accordingly. On the basis that I am finding Numbered Company to be the true employer, I direct, as the Union requested, that Numbered Company provide the following information:

> [T]he Numbered Company must on an going basis, until collective bargaining for a first collective agreement is concluded, disclose to the Union particulars of any money paid to it or to any other person in connection with the business at Inglewood, and particulars of any money paid by the Numbered Company to any other person.

24 I turn now to the Union's application pursuant to Section 11 of the Code. Where an employee is based on the seniority list depends on the terms in the collective agreement that define seniority. The parties have not reached a collective agreement and as the Employers note, the parties continue to negotiate whether time spent with the previous employer should count for an employee's seniority with Numbered Company. While a seniority list may not be possible, the Employers acknowledge that the Union is entitled to all relevant employee contact information.

25 The Employers submit that Numbered Company's inability to provide accurate employee information has been a result of previous payroll records and poor record keeping. I do not accept this argument. All current Inglewood employees would have applied to work with Numbered Company when it took over the Inglewood contract in 2010. Numbered Company would have hired some of the previous contractor's employees and hired some new employees. Numbered Company would have been

scheduling all employees to work since it took over the contract. The hours worked by each employee would be available from Numbered Company's payroll department. In the circumstances of this case, I find the Employers' acknowledged failure to provide the relevant information constitutes a breach of Section 11 of the Code.

26 The Union is entitled to the names of all employees, contact information for each employee, each employee's start date with Numbered Company and his/hers hours worked since their first shift with Numbered Company up until the date of this decision. From the case management meeting there was some uncertainity as to what information the Union has actually received. The Employers have ten calendar days to provide the employee contact information. The parties may seek the assistance of a Special Investigating Officer to determine what information the Union is entitled to receive.

V. SUMMARY

27 The Union's common employer application is dismissed. The Employers true employer application is successful and the Inglewood certification will be amended. The Union's Section 11 application is successful. The Employers must disclose all financial information pertaining to Numbered Company and all current employee information, including the names and contact information for each employee, start dates with Numbered Company and his/hers hours worked with Numbered Company.

28 The Board remains seized to deal with any matters arising out of this decision.

LABOUR RELATIONS BOARD

"*RICHARD S. LONGPRE*"

RICHARD S. LONGPRE
VICE-CHAIR