

BRITISH COLUMBIA LABOUR RELATIONS BOARD

FLEETWOOD SAUSAGE, A DIVISION OF
CONSOLIDATED FOOD BRANDS INC.

(the "Employer" or "Fleetwood Sausage")

-and-

LOCAL 213 OF THE INTERNATIONAL BROTHERHOOD
OF ELECTRICAL WORKERS

(the "Union")

PANEL:	Frances R. Watters, Associate Chair (Adjudication) Barbara J. Junker, Vice-Chair Robert Pekeles, Vice-Chair
COUNSEL:	Colin G.M. Gibson, for the Employer Ron Dickson, for the Union
CASE NO.:	43744
DATE OF HEARING:	January 18, 2001
DATE OF DECISION:	February 16, 2001
DATE OF REASONS:	March 21, 2001

REASONS FOR THE BOARD'S DECISION

I. NATURE OF APPLICATION

1 The Employer applied for leave and reconsideration under Section 141 of the
Labour Relations Code (the "Code") of BCLRB No. B364/2000 (the "Original Decision"),
which granted the Union's application for certification of a bargaining unit consisting of
the employees in the Employer's maintenance department. In so doing, the Original
Panel dismissed the Employer's objection that the proposed unit was inappropriate for
collective bargaining. The Panel held that the proposed bargaining unit met the Board's
criteria for appropriateness as set out in *Island Medical Laboratories Ltd.*, BCLRB No.
B308/93 (Leave for Reconsideration of IRC No. C217/92 and BCLRB No. B49/93),
(1993) 19 CLRBR (2d) 161 ("*IML*"). In its application for reconsideration, the Employer
submitted the Original Panel erred in finding that the proposed bargaining unit was
appropriate for collective bargaining.

2 At the urging of the parties, this panel issued a "bottom-line" decision, with
reasons to follow, on February 16, 2001 (BCLRB No. B52/2001). After considering the
parties' submissions, we granted leave but dismissed the Employer's application for
reconsideration. Following are the reasons for our decision.

II. BACKGROUND

3 There is no dispute as to the relevant facts, which are set out in the Original
Decision and can be summarized as follows.

4 For approximately 25 years, Fleetwood Sausage has operated a meat
processing plant in Surrey, British Columbia. Despite a number of organizing drives
conducted by various trade unions over the years, its employees remained non-union.
On June 9, 2000, the Union applied for certification of the employees in the
maintenance department of the plant. There are 13 employees in the proposed
bargaining unit. In total, there are approximately 227 employees at the Surrey plant.
The plant consists of 14 departments, nine of which are involved in the receiving,
processing and shipping of meat products. The remaining five departments provide
support services: maintenance; janitorial/lunchroom; quality assurance; research and
development; and the office. All of the departments are located within the plant.

5 The management structure at the Fleetwood Sausage plant is headed by a Plant
Manager. Below him are three Process Managers, a Maintenance Manager and an
Employee Development Manager. The next level of management consists of 10 shift
leaders, who are responsible for the day-to-day operations within given departments or
shifts. One of these shift leaders is responsible for "Maintenance", while the rest are
responsible for various production departments or shifts.

6 Despite the division of the workplace into departments, certain matters are dealt with on a plant-wide basis. These matters include those dealt with by an Employee Management Committee made up of management and employee representatives. The Employee Management Committee meets monthly to deal with various employment related issues, and also discusses and implements changes to the Fleetwood Sausage Employee Handbook. The Handbook deals with such issues as hours of work, job postings, departmental transfers, wages, overtime, layoffs, recall rights, bumping, statutory holidays, discipline, etc. A number of other programs apply to all employees in the plant. These include: a benefit plan; social events such as the company picnic; a Continuous Improvement Incentive Plan; a training and educational assistance program; and an employee orientation and evaluation program.

7 Fleetwood Sausage employees are divided into nine classifications for the purpose of determining their wage rates. Within the maintenance department, there are three job titles: maintenance helper paid at Job Class V; non-licensed maintenance technician paid at Job Class VIII; and maintenance technician (licensed) paid at Job Class IX. Of the 13 employees in the proposed bargaining unit, eight are maintenance employees and one is currently in the apprentice program. The remaining four are casual employees classified as maintenance helpers. The maintenance work ranges from skilled functions such as repair and maintenance of machinery to unskilled functions such as painting, replacing light bulbs, etc.

8 The maintenance employees have a shop area where their tools are kept, but most of their work is performed throughout the plant, alongside the other employees. A considerable portion of the maintenance work involves preventative maintenance and repair of equipment within the plant. Certain maintenance functions, such as knife and blade sharpening, lubrication of machines, tooling of equipment, and removing and reinstalling piping, are handled by production and packaging employees. Although some maintenance employees began work elsewhere in the plant and bid into maintenance positions, once in the department maintenance employees do not perform non-maintenance (i.e., production) work as part of their normal job function. Similarly, although production employees are occasionally assigned less skilled maintenance work (e.g., painting) during slow production periods, this is not a normal part of their job function.

9 The arguments of the Employer and the Union were set out in detail in the Original Decision (paras. 31 to 74). In brief, the Employer argued that certifying a bargaining unit consisting of the maintenance employees would be contrary to the statements in *IML* that the Board will not certify a single classification (p. 184) and will not select out a minority of classifications within a physically integrated plant (p. 201). The Employer also cited Ontario Labour Relations Board cases as authority for the proposition that a unit consisting of only a small segment of employees (such as a single department or classification) within a physically integrated plant is inappropriate. It submitted that certifying this unit would effectively be certifying a craft unit in an industrial setting. The Employer further submitted that certifying the unit applied for would significantly curtail the ability of the other employees in the plant to choose their bargaining agent, should they decide to seek trade union representation. It also

disrupts the existing employee relations regime of having an Employee Management Committee and Employee Handbook rather than a union and a collective agreement.

10 With respect to the four community of interest factors governing appropriateness on an initial application for certification set out in *IML*, the Employer submitted that, while the maintenance employees have their own distinct set of skills and duties, they share common interests and working conditions with other employees. While the proposed bargaining unit reflects the Employer's departmental structure, all of the departments work as a team. With respect to functional integration, the Employer conceded that there was no daily employee interchange or overlapping duties. Nonetheless, it pointed again to the pervasive "team" concept employed at the plant, and the fact that the maintenance employees work throughout the plant and coordinate with other employees to do their work. Finally, in terms of geography, all employees work at one location, and the maintenance employees work alongside the other employees throughout the plant.

11 In response, the Union submitted that it was not seeking to cut across classification lines, nor to certify a single classification. It further submitted that the Ontario jurisprudence relied upon by the Employer is distinguishable on the basis of a different certification policy in that jurisdiction. It rejected the suggestion that it was seeking to certify a craft unit. The Union further denied that granting its certification would have any significant effect on the rights of the rest of the employees to choose trade union representation. It is willing to organize the remainder of the plant, when the employees are ready. Alternatively, a subsequent application by another union for a larger, encompassing unit would displace the existing unit. Other options might include a poly-party union. The Union said the Employer led no evidence to indicate that certification of the maintenance employees would be unduly disruptive of the existing regime, and it said the presence of the Union would not preclude the Employer from continuing its present program of positive employee relations.

12 With respect to the four community of interest factors, the Union submitted that the distinctive skills and duties of the maintenance employees, which are not specific to the food industry, meant that the interests of these employees are divergent from the other employees. With respect to functional integration, the Union cited a number of Board decisions directed at establishing that the various aspects of integration or teamwork cited by the Employer did not amount to functional integration in the sense contemplated by *IML*. The Original Panel noted that the cases established that a cohesive functional relationship between departments, and a strong "team" concept, are not necessarily factors which preclude a finding of appropriateness (para. 67). With respect to the fourth factor, the Union conceded that the maintenance employees' work takes them throughout the plant, but it said their "working life" is focused on the maintenance shop.

III. ORIGINAL DECISION

13 The Original Panel, noting that this was an application for an initial, as opposed to an additional, bargaining unit, began by considering the first four *IML* community of

interest factors. With respect to the first factor (similarity in skills, interests, duties and working conditions) the Original Panel concluded that, while the interests and working conditions of the maintenance employees are similar to other employees by virtue of the Employer's progressive management approach, the technical trade qualifications and job functions do result in the skills and duties of the maintenance department being somewhat different than those of the plant production employees. The Original Panel further noted that, given the Board's experience that larger and more diverse bargaining units have proven to be viable in collective bargaining, this factor, while remaining a consideration, "may provide only limited conceptual guidance" (para. 78).

14 Regarding the second factor (physical and administrative structure of the Employer), the Original Panel noted the Employer operates several distinct departments, but the Employer's "team approach" management style creates a strong functional relationship between the various departments. With respect to the fourth factor (geography), the Original Panel commented only that it was "not a factor here as all employees work in the same plant" (para. 107). The Original Panel spent the bulk of its analysis considering the third factor, functional integration (paras. 86-106). In the course of its analysis, it considered a number of the arguments raised by the parties.

15 The Original Panel began by quoting the definition of "functional integration" found in *IML* (para. 86). It then noted that in decisions of the Board subsequent to *IML* "functional integration has emerged as the major factor in considering whether the proposed bargaining unit will produce a viable collective bargaining regime" (para. 87). In support of this proposition it cited *Lifestyle Retirement Communities Ltd. (formerly International Care Corporation)*, BCLRB No. B452/97 (Leave for Reconsideration of BCLRB No. B163/97), (1998), 39 CLRBR (2d) 202; and *Richmond Elevator Maintenance Ltd.*, BCLRB No. B119/97, (1997), 35 CLRBR (2d) 110. It then summarized the concepts found in *IML*, *Lifestyle* and *Richmond Elevator* as follows:

A functional relationship between departments is to be expected in a workplace in order that it operate in an efficient manner. This is especially true in today's workplaces where the traditional industrial model has evolved into a more participative collaborative model. Employee interchange, shared duties, integrated job duties, overlapping duties, team processes and continuous work processes can demonstrate a level of functional integration. Functional integration must reflect a consistent managerial policy. It must be regular and not simply based on relief or replacement of employees. It need not be daily, but must be regular as opposed to incidental. Not all levels of functional integration will result in a determination that a bargaining unit is inappropriate. The Board will examine the nature or type and extent of functional integration to determine whether the proposed bargaining unit structure will result in viable collective bargaining. (para. 89)

16 The Original Panel then noted that the task of analyzing functional integration is not an easy one, and that Board policy "must provide guidance to the community but it

must also be flexible enough to be responsive to the nuances of many different workplaces" (para. 90). The Original Panel stated:

... the facts in this case reveal a strong functional relationship between the various departments by virtue of the Employer's style of operation. However, there is virtually no employee interchange, shared duties or overlapping duties. In fact in argument the Employer conceded that there is not enough of that type of functional integration in the case at hand to, in and of itself, defeat the Union's application under *IML* principles. (para. 91)

17 The Original Panel then noted the Employer's argument that it was simply inappropriate to certify a bargaining unit of "13 out of 227 employees involving only one of 14 departments in circumstances where all the employees work in a single physically integrated plant" (para. 92). The Original Panel set out the passage in *IML* where, after defining the first four community of interest factors, the Board set out additional "restrictions" on appropriateness. These include the statement that the Board will not cut across classification lines, nor certify a single classification, unless the single classification happens to be the majority of bargaining-unit members at a certain geographic location, or the employees fall within the *Woodward Stores* doctrine of the traditionally difficult to organize (para. 93). The Original Panel stated:

The Union did not argue that the employees in the case at hand fall within the doctrine of the traditionally difficult to organize.

We conclude that the case at hand is not an example of cutting across classification lines, nor certifying a single classification. The Union's application covers all maintenance employees which includes three employee classifications. If the Union's application included licensed maintenance technicians only, or included only one of the proposed two maintenance departments, then the application might have fallen within this category. (paras. 94-95)

18 The Original Panel next dealt with an argument raised by the Employer concerning the proper interpretation of the decision in *IML* concerning one of the two cases under reconsideration, *Dueck Chevrolet Oldsmobile Cadillac Limited*, IRC No. C217/92 ("*Dueck*"). The Employer relied on a passage where the *IML* panel remarked that the Board "will not select out a minority of classifications in a physically integrated plant as an appropriate bargaining unit in other than traditionally difficult-to-organize sectors" (see para. 97 of the Original Decision). The Employer argued that the Union's application for certification of the maintenance employees of Fleetwood Sausage fit this description and therefore should not be permitted. While the Original Panel accepted that the physically integrated nature of the plant was a factor to be considered, it did not accept that the passage in question stood for the proposition that any proposed bargaining unit which consisted of less than a majority of classifications in a physically integrated bargaining unit was necessarily inappropriate:

In *IML* the Board included in its definition of functional integration "integrated work processes that go beyond a functional relationship between departments. A continuous work process (e.g. assembly line), overlapping and shared duties, team processes ... (page 182). We conclude that the consideration of the effect of a physically integrated plant falls within the general consideration of functional integration. The nature or type and extent of physical integration, taken in conjunction with other functional integration factors, may render it impossible to draw a rational defensible boundary around a proposed unit.

We conclude further that the reference to "minority of classifications" also reflects a concern for the level of integration. It is not simply a reference to numbers, resulting in a numerical analysis being implied into the concept of functional integration. To illustrate the problems with an arithmetical approach, one need only consider what the term "classifications" could mean in different workplaces. A minority of classifications may in fact contain the majority of employees. The Code contemplates the possibility of certifying a bargaining unit of one person. There is nothing in the Code that requires the certification to include either a certain number of people or a particular percentage of the total workforce. We conclude that the emphasis of the comment is properly on the appropriateness of the "selecting out" rather than the numerical proportion.

We conclude that the reconsideration panel's above noted comments in *Dueck* stand for the proposition that it may not be possible to draw a rational defensible line around a given selection of classifications in a physically integrated workplace because there may be a level of functional integration such as to interfere with viable collective bargaining. (paras. 103-105)

19 The Original Panel then concluded its analysis of the functional integration factor by referring to the facts before it:

We acknowledge that there is a strong functional relationship between the maintenance department and the other departments. However, the nature, type and extent of functional integration in the case at hand is not sufficient to defeat the certification application. There is no overlap or shared duties, nor any employee interchange. If the Union was attempting to certify one of the production departments our conclusion may have been different. Such an application may create legitimate collective bargaining concerns if one production department was carved out of the continuous work process. However, while the maintenance department has a strong functional relationship with other departments, it acts independent of the production department processes to a large measure. (para. 106)

20 The Original Panel summed up its consideration of all four *IML* factors as follows:

When considering all four *IML* factors, we conclude that a rational and defensible boundary can be drawn around the proposed bargaining unit. There is little or no functional integration, the maintenance employees duties and skills are different than the production employees, and the employees are confined to the most part to a specific department (or two departments if the current department is split). (para. 108)

21 Finally, the Original Panel dealt with the Employer's argument concerning the effect of certifying the proposed bargaining unit on the choice of the other employees with respect to trade union representation. It noted that, while the Board's policy on appropriateness is based on the two fundamental principles of access to collective bargaining and industrial stability, employee wishes with respect to bargaining *agent* is not determinative of appropriateness: "[t]he Board's policy on appropriateness may limit employee choice of a particular bargaining agent in some cases; but it does not limit access to collective bargaining in a general sense" (para. 110). The Original Panel further noted that the other employees have a number of choices with respect to seeking union representation, and they may also choose to continue under the current regime.

IV. POSITIONS OF THE PARTIES

22 In its application for reconsideration, the Employer submits that the Original Decision is inconsistent with principles expressed or implied in the Code, and in particular the decision is inconsistent with the law and policy on appropriateness as expressed in *IML*. The Employer submits:

The policy issue in this case - which was placed squarely before the Original Panel - is whether it was appropriate for the Union to be certified for a bargaining unit that consists of only 13 of the Employer's approximately 227 employees, in only one of the Employer's 14 departments, in circumstances where all employees work in a single physically integrated plant under a common set of working conditions.

23 The Employer further submits that the Original Decision "stands for the proposition that the only *IML* factor that has any real importance in an initial application for certification is functional integration ... the other *IML* factors are pushed into the background and given no real weight or significance at all." On the issue of functional integration the Employer submits:

As we conceded before the Original Panel, the instant case does not feature the type of functional integration between the maintenance and other departments that would - under the *IML* functional integration tests - be sufficient in and of itself to defeat the Union's application for certification. In essence, the maintenance employees perform their own work, and they do not get involved very frequently in the work of other employees. There is no daily interchange of employees or overlapping duties.

The same can be said, however, of most departments at the Plant. Although all employees work in a physically integrated environment under a common set of working conditions, each employee essentially performs his or her own job and does not cross over into other departments or job functions.

Having said that, elements of integration do exist that, in our respectful submission, are relevant to the appropriateness of this bargaining unit. ...

24 The "elements of integration" then referenced by the Employer are all factual matters which the Employer presented to the Original Panel and which were noted in the Original Decision. They include the facts that: the maintenance employees are part of the overall "team" of employees at the plant and have common working conditions; they participate with other employees on various plant-wide committees; and they work throughout the plant and coordinate their work with other employees.

25 As well as reiterating the fact-specific arguments it put before the Original Panel, the Employer repeats the policy arguments it made. It cites the passage in *IML* which states that the Board will not select out a minority of classifications in a physically integrated plant as an appropriate bargaining unit, citing the same authorities in support of this argument as were cited to the Original Panel. It argues again that certifying a unit made up of only 13 out of approximately 227 employees in a single physically integrated plant is inappropriate, because this is either the certification of a single classification or a minority of classifications in a physically integrated plant. It also repeats the argument that certifying the proposed bargaining unit unduly restricts the right of the other employees to freely choose their bargaining agent.

26 In response, the Union disputes the Employer's suggestion that the Original Panel failed to properly consider the other three factors besides functional integration, noting that the other factors were expressly considered. The Union notes that the Original Panel dealt expressly with all of the arguments the Employer is raising on reconsideration, and submits that the Original Panel's conclusions on those arguments are correct. It submits that the Original Panel did not deviate from Board policy as set out in *IML* in determining that the proposed unit was appropriate, and that the application should therefore be dismissed.

V. ANALYSIS AND DECISION

27 One function of the reconsideration power in Section 141 is to allow for review or clarification of Board policies. The Employer's application raises questions regarding a number of statements in *IML*, the Board's leading policy decision on bargaining unit appropriateness. We viewed this case as an appropriate one in which to address those questions. Accordingly, we granted leave.

28 The Employer argues that the Original Panel erred in over-emphasizing functional integration at the expense of the remaining three *IML* factors. We disagree.

First, it is evident on the face of the decision that the Original Panel did give consideration to the remaining three factors. Each factor received a separate analysis, and the Original Panel expressly considered all four factors in reaching its conclusion (see para. 108, cited above). Second, the factor of functional analysis did receive a lengthier analysis than the other three, but that is neither surprising nor evidence of a reviewable error. The Board has recognized in previous decisions that functional integration is often the most significant of the four factors. The Original Decision cannot reasonably be taken to stand for the proposition that it is the only significant factor; all four factors require (and received) consideration. However, the Original Panel correctly recognized that in this case the other three factors provide relatively little guidance, and that appropriateness here would be largely determined by an analysis of functional integration.

29 We also do not accept the Employer's argument that certifying the proposed bargaining unit was inconsistent with the law and policy on appropriateness because it certified a single classification. We agree with the reasons given by the Original Panel:

We conclude that the case at hand is not an example of cutting across classification lines, nor certifying a single classification. The Union's application covers all maintenance employees which includes three employee classifications. If the Union's application included licensed maintenance technicians only, or included only one of the proposed two maintenance departments, then the application might have fallen within this category. (para. 95)

30 The Employer argues that, in reality, the maintenance department constitutes a "single classification" of employees. It points to a passage in *IML* which states the Board will not "certify a single classification" (p. 184).

31 In our view, care must be taken in relying on a few words in any decision in isolation and, in so doing, ignoring the context of the remarks and the underlying policy considerations. The Board did say in *IML* that it would not "certify a single classification". However, it did so in the context of encouraging access to collective bargaining on initial certification applications where the proposed bargaining unit is appropriate or viable for collective bargaining.

32 Here, although the three "classifications" are similar, the Employer's own organizational structure recognizes that they constitute a distinct "department". In our view, a "classification" means something different from a department. A department reflects an employer's physical or administrative structure and refers to a distinct block or grouping of the employees in the workplace (e.g., the maintenance department, the drivers, the administrative staff, etc.). Even a relatively small department may have a distinct community of interest so as to constitute a viable entity for collective bargaining purposes. A "classification", on the other hand, refers to a narrow band of employees sharing the same wage rate, job description or some other similar factor. A classification is typically either a component of a single department or stretches across several departments. In either case, it is unlikely to meet the requirement of having a distinct

"community of interest" from other employees so as to constitute a viable entity for collective bargaining.

33 Thus, a single classification of employees will not normally be certified as a bargaining unit. However, a department may well be an appropriate bargaining unit, depending on whether the *IML* criteria for appropriateness are met. Here, the maintenance department was found to meet the criteria.

34 We also do not accept the Employer's argument that the Original Panel certified a "craft unit" in an industrial setting. Again, the Employer relies on language in *IML* that the Board "will not certify a craft in the industrial sector" (p. 200). Certifying craft units in such a setting would lead to a proliferation of bargaining units, which in turn would raise the industrial stability concerns articulated in *IML*. Craft units are therefore not appropriate outside certain distinct sectors or industries, such as construction. However, the mere fact that employees in a proposed bargaining unit have craft-based skills does not necessarily mean that it is a "craft unit".

35 Here, the Employer's evidence was that the work performed by the maintenance employees ranged from unskilled functions such as replacing light bulbs to skilled functions such as repair and maintenance of machinery; that the department does not operate upon craft or jurisdictional lines; that many of the maintenance employees are skilled in more than one trade; and that "cross-training" is encouraged (see points 35 and 36 in para. 18). This is inconsistent with a "craft unit", which is defined by the fact that the employees all belong to one craft (with a specific craft-based set of skills), are represented by the union which pertains to that craft, and cannot expand beyond the parameters of the craft. Based on the facts found by the Original Panel, the proposed bargaining unit does not constitute a craft unit in an industrial setting but rather reflects the Employer's departmental structure. Further, the Union's willingness to represent the rest of the employees (noted in the Original Decision at para. 61) is also inconsistent with a craft unit "mind-set" of representing only those affiliated with the particular craft.

36 The Union's application was for one of the Employer's 14 departments. Under *IML*, a union is not precluded, on an application for initial certification, from seeking to represent a single department (as opposed to a single classification), subject to the four appropriateness criteria. The Employer argues, however, that it is not appropriate to certify this department, because it constitutes such a small proportion of the total workforce, all working under common conditions in a single, physically integrated plant. It cites several Ontario Labour Relations Board decisions in which factually similar applications were rejected. It also argues that certifying such a unit is inappropriate because of the effect on the remaining employees' choice of bargaining representative and on the existing (non-union) employee relations regime.

37 We find the Original Panel did not err in refusing to apply the Ontario jurisprudence, for the reasons given by the Original Panel:

. . . We do not find the Ontario case law helpful. Ontario jurisprudence with respect to the appropriateness of a proposed

bargaining unit has not developed in the same fashion as in this Province. We must consider the twin objectives articulated in *IML*, namely access to collective bargaining on one hand and industrial stability on the other, to the facts of this case. (para. 75)

38 We further find that the Original Panel set out the correct analytical framework for its decision on the appropriateness issue in this case:

The test for the appropriateness of a proposed bargaining unit is set out in the Board's leading authority, *IML*. Community of interest is the test for determining an appropriate bargaining unit. An appropriate bargaining unit must have a rational and defensible boundary. The structure created by granting a certification application must be one that is conducive to viable collective bargaining and collective agreement administration. *In an application for an initial certification the predominant concern is access to collective bargaining, although industrial stability remains a consideration. The first four IML community of interest factors are considered: similarity in skills, interests, duties and working conditions; the physical and administrative structure of the employer; functional integration; and geography.* In an application for a second or additional certification the predominant concern is industrial stability, although access to collective bargaining remains a consideration. At this stage, in addition to the first four *IML* community of interest factors noted above, the Board also considers the fifth and sixth *IML* factors: the practice and history of the collective bargaining scheme; and the practice and history of collective bargaining in the industry or sector.

Given that the case at hand involves an initial certification application, the first four *IML* community of interest factors must be considered. (paras. 76-77, emphasis added)

39 The Original Panel then goes on to consider each of the four *IML* community of interest factors (paras. 78 - 107). We find no error in its consideration of the first, second and fourth factors. Moreover, as indicated earlier, in our view the Original Panel correctly concluded that these factors give limited guidance in the present case, and that the issue here turns on an analysis of the third factor, functional integration. In analyzing functional integration, the Original Panel noted both that there was a strong functional relationship throughout the workplace, including the maintenance department, and the Employer's concession that this functional relationship stopped short of the type of "functional integration" which, in and of itself, would preclude the application:

The Panel must consider the nature or type and extent of functional integration. As we noted above, the facts in this case reveal a strong functional relationship between the various departments by virtue of the Employer's style of operation. However, there is virtually no employee interchange, shared duties or overlapping duties. In fact in argument the Employer conceded that there is not enough of *that type* of functional integration in the

case at hand to, in and of itself, defeat the Union's application under *IML* principles. (para. 91, emphasis added)

40 Typically, functional integration is defined in terms of employee interchange and shared or overlapping duties. However, as the Original Panel correctly recognized, there is more than one "type" of functional integration which may preclude the certification of a single department. Another distinct type of functional integration which precludes certification of a single department is described in the second half of the passage from *IML* quoted in the Original Decision at para. 86:

... There are *also* the integrated work processes that go beyond a functional relationship between departments. A continuous work process (e.g., assembly line), overlapping and shared duties, team processes, all require a single bargaining unit. The focus of this criterion is therefore upon how the employer has organized itself operationally. (*IML*] pp. 181-2, emphasis added)

41 In our view, there may well be situations where a maintenance department or employee(s) are integrated into a production assembly line such that the department or employee(s) is part of the "continuous work process" or the assembly line itself. In those circumstances, a rational defensible line could no more be drawn around the maintenance department or employee(s) than around any portion of the assembly line: a single bargaining unit for the entire work process would be required. Although the Employer did not expressly argue this scenario, we find the Original Panel was alive to this possibility, as evidenced by its analysis in paras. 103 -106. In particular the Original Panel quoted the relevant passage from *IML*, and considered the issue in relation to the facts before it:

In *IML* the Board included in its definition of functional integration "integrated work processes that go beyond a functional relationship between departments. A continuous work process (e.g. assembly line), overlapping and shared duties, team processes ... [*IML*] (page 182). ...

We acknowledge that there is a strong functional relationship between the maintenance department and the other departments. However, the nature, type and extent of functional integration in the case at hand is not sufficient to defeat the certification application. There is no overlap or shared duties, nor any employee interchange. *If the Union was attempting to certify one of the production departments our conclusion may have been different. Such an application may create legitimate collective bargaining concerns if one production department was carved out of the continuous work process.* However, while the maintenance department has a strong functional relationship with other departments, *it acts independent of the production department processes to a large measure.* (paras. 103 & 106, emphasis added)

42 We are not prepared to disturb the finding that, in this particular case, the maintenance department acts sufficiently independent of the production process that certifying the maintenance department does not give rise to "legitimate collective bargaining concerns" that would arise from carving out a single production department.

43 To the extent that the Employer's production departments (all or some of them) constituted an "integrated work process", the Original Panel effectively concluded that the maintenance department in this case, on the evidence, was not an integral part of it.

44 As noted above, the Employer did not stress the interrelationship between the work of the maintenance department and the production departments, but rather emphasized the integration of the maintenance employees into the plant as a "functionally coherent organization". This integration was both "physical" (they worked throughout the plant and coordinated with other employees in doing their work) and in terms of shared working conditions, programs, etc. The Original Panel acknowledged the progressive measures the Employer had taken to create a physically integrated workplace with a common set of working conditions; however, it found that this did not preclude the maintenance employees from constituting an appropriate bargaining unit. We find that the Original Panel did not err in so concluding.

45 The Employer argues that certifying the proposed bargaining unit will disrupt the pre-existing employee relations regime, especially the Employee Management Committee and the Employee Handbook. It further submits that "meshing" the terms and conditions of employment for the two groups will present significant bargaining challenges. The Union submitted to the Original Panel that the Employer led no evidence to support this argument, and that the presence of the Union "would not preclude the Employer from continuing its present program of positive employee relations. The bargaining unit employees could be exempted from aspects of the Handbook as necessary" (para. 64).

46 To the extent that the proposed bargaining unit requires the Employer to negotiate a new set of working conditions for its unionized employees, and "mesh" those conditions with its existing regime, it must be recognized that virtually every initial certification will have such an effect. Indeed, the opportunity to have a union enter into negotiations on their behalf regarding their working conditions is usually a prime reason why employees choose certification. The disruption this may cause to the regime previously established by the employer is not a reason to deny employees access to collective bargaining, as long as the unit applied for is otherwise appropriate.

47 Finally, the Employer submits that, as a matter of policy, certifying a bargaining unit consisting of 13 out of 227 employees in a single, physically integrated plant is inappropriate. It says it unduly restricts the choice of bargaining representative of the remaining employees, in the event that they should decide to become certified. In addition, the remaining employees will be affected by the certification in the event of a labour dispute, even though their wishes were not canvassed.

48 The Original Panel dealt with the first part of this argument at paragraphs 109-111. It pointed out that the Code protects the right to choose trade union representation, but not necessarily the choice of trade union *representative*, which may be limited by the Board's policies on appropriateness. An obvious example of this is the Board's presumption against certifying multiple bargaining units, which often has the effect of limiting employee choice of representative to that union which is "first in the door" at their workplace. This effect is heightened by the fact that many unions choose to follow a "no raiding" rule which precludes even applications that the Board would not categorize as raids within the meaning of the Code (that is, applications for a larger bargaining unit that encompasses an existing smaller unit). However, the Board cannot build its appropriateness policies around such self-imposed restrictions over which the Board exercises no control.

49 While the current reality is that another union is unlikely to apply for a bargaining unit which encompasses the Union's existing unit, there is in fact no legal barrier to such an application. In light of this, it would not be wise for the Board to modify its current balanced and generally accepted approach to initial and subsequent certification application enunciated in *IML*, either by making it more difficult for unions to obtain initial certification or easier for them to obtain a second bargaining unit, in order to deal with the "first in the door" concern. To the extent that the numbers in the present case are more dramatic than in most cases of initial certification (13 out of approximately 227 employees), this case can probably be regarded as a "high watermark" in terms of certifying a small percentage of the workforce on initial certification. However, we consider this to be simply a reflection of the particular facts of this case and not an improper application of the Board's law or policy. As noted in the Original Decision, "[t]here is nothing in the Code that requires the certification to include either a certain number of people or a particular percentage of the total workforce" (para. 104). Size of the bargaining unit, whether in absolute terms or relative to the workforce as a whole, is not, in and of itself, a determinant of appropriateness.

50 The Employer argues that the Board in *IML* said that it "will not select out a minority of classifications in a physically integrated plant as an appropriate unit in other than traditionally difficult-to-organize sectors" (p. 201). Once again, we caution against relying on isolated words when they must be read in the context of the decision as a whole. We accept as reasonable the Original Panel's analysis of the "select out a minority of classifications" passage in *Dueck*:

We conclude further that the reference to "minority of classifications" also reflects a concern for the level of integration. It is not simply a reference to numbers, resulting in a numerical analysis being implied into the concept of functional integration. To illustrate the problems with an arithmetical approach, one need only consider what the term "classifications" could mean in different workplaces. A minority of classifications may in fact contain the majority of employees. The Code contemplates the possibility of certifying a bargaining unit of one person. There is nothing in the Code that requires the certification to include either a certain number of people or a particular percentage of the total workforce.

We conclude that the emphasis of the comment is properly on the appropriateness of "selecting out" rather than the numerical proportion.

We conclude that the reconsideration panels' above noted comments in *Dueck* stand for the proposition that it may not be possible to draw a rational defensible line around a given selection of classifications in a physically integrated workplace because there may be a level of functional integration such as to interfere with viable collective bargaining. (paras. 104-5)

In addition, we note that the passage in *IML* is prefaced by the phrase "[a]lthough not necessary to our determination in this case, we also note that ...". Accordingly, due to its *obiter* nature, we find that little weight can be placed on it as an expression of Board policy. In our view, the phrase does not reflect any policy on the part of the Board to refuse to certify an otherwise appropriate bargaining unit simply because it happens to contain a minority of classifications in the workplace, or less than a majority of employees therein.

51 It follows that we do not accept the argument that it is "undemocratic" to allow a minority of the employees in the workplace essentially to determine the choice of bargaining agent for the workplace on initial certification. As noted in *IML*, the certification scheme "borrows heavily from our democratic traditions of majority rule" (p. 109). However, the democratic principle in the Code of "majority wishes" determining union representation is with reference to the majority *in the bargaining unit*, not the workplace as a whole. If it were necessary to consider the wishes of the majority of employees in the workplace as a whole with respect to union representation, then certification of anything less than an all-employee unit would be considerably rarer. If the union had the support of the majority of the employees in the workplace as a whole, then it would normally apply for an all-employee unit. No party is arguing that the only appropriate unit is an all-employee unit. A union is not required to obtain majority support in the workplace as a whole, only majority support within an appropriate bargaining unit.

52 Initial certification of a small bargaining unit such as one department within a plant (or one location within a multi-location chain) is also not akin to the build-up principle, where the union seeks to represent the entire larger workforce which is not yet in place, based on the wishes of the few that are. In that case, it is undemocratic to allow an unrepresentative minority to decide the bargaining agent for the whole. Here, on the other hand, the Union may never represent more than the maintenance employees at Fleetwood Sausage. The wishes of the majority of employees with respect to bargaining agent may remain that they do not wish to be represented at all.

53 It would be inconsistent with the scheme of the Code and the importance of allowing access to collective bargaining in initial certification applications to deny the maintenance employees certification in a unit appropriate for bargaining because the incidental effect might be to limit the choice of bargaining agent of the remaining

employees. In the event those employees opt for certification, they will not be without choices, as the Original Panel pointed out:

... they could seek representation from the Union and apply to be varied into the Union's certification. They could approach another union and ask the two unions to seek a poly-party certification. They could approach another union and it could apply for an all employee bargaining unit, and if successful, such an application would result in the cancellation of the Union's certification. The employees may also choose to continue under the current regime.
(para. 111)

54 An inescapable result of certification of a less than all-employee unit is that those employees who remain non-union will be affected by the certification. On the one hand, their work may be interrupted by a work stoppage; on the other, their terms and conditions of employment may be altered or even improved, depending on the effect of collective bargaining. Such is a necessary consequence of the scheme of the Code.

VI. CONCLUSION

55 For the above reasons, leave for reconsideration was granted but the Employer's application for reconsideration was dismissed.

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