

BRITISH COLUMBIA LABOUR RELATIONS BOARD

WINTRESTLE INTERMEDIATE CARE INC.

("Wintrestle" or the "Employers")

-and-

HOSPITAL EMPLOYEES' UNION

("HEU" or the "Union")

-and-

INDEPENDENT LIVING HOUSING SOCIETY OF GREATER VICTORIA

("Independent" or the "Employers")

-and-

HOSPITAL EMPLOYEES' UNION

("HEU" or the "Union")

PANEL: Emily M. Burke, Vice-Chair

COUNSEL: Paul Lim and Brian Whitfield, for Wintrestle
and Independent
Susan Lagacé and Lucille (Lee) Whyte, for the HEU

CASE NO(S): 18375, 18337

DATE OF HEARING: March 30, 1994

DATE OF DECISION: May 13, 1994

DECISION OF THE BOARD

I. NATURE OF THE APPLICATION

In two separate applications the Hospital Employees' Union ("HEU" or the "Union") applied for a unit of employees of Wintrestle Intermediate Care Inc. ("Wintrestle") and a unit of employees of Independent Living Housing Society of Greater Victoria ("Independent"). The Employers did not object to the applications. Rather, each requested a clarification to the bargaining unit description.

In the first application, the HEU applied for a unit described as:

employees at and from Wintrestle Intermediate Care Inc. and
Fleetwood Adult Day Care.

In the second application, the HEU applied for a unit described as:

employees at and from Independent Living Housing Society of
Greater Victoria.

At the hearing, each Employer requested the description of the bargaining unit be amended to include the addresses of work sites in the bargaining unit. The Union objected. As a result, at issue is the description of the two bargaining units. The Board requested written submissions on this issue.

II. BACKGROUND

Wintrestle operates two long-term care facilities in Surrey, B.C. The first facility, located at 8382 - 156 Street in Surrey contains ten beds; four government-funded and six non-government funded. The second facility, located at 15660 - 84th Street in Surrey contains ten government-funded beds and houses the Fleetwood Adult Day Care.

Independent operates five group homes, one day program, and an administrative office for mentally and physically handicapped people in Greater Victoria.

III. ARGUMENT

The Employers argue the address of each work site should be included in each certification to accurately define the bargaining unit. To accede to the Union's description would create an open-ended geographical certification which would be too vague and ambiguous for the purposes of the Code. In addition, the requirements in the Code respecting the employees in new operations would be circumvented as these employees would simply be swept into the geographic bargaining unit despite their wishes. The Union would be able to evade the requirements of sufficient membership support to represent a new group of employees. The Employers also note the general practice of the Board has been to include the addresses of the operations.

In making these arguments, the Employer relies upon *Island Medical Laboratories Ltd.*, BCLRB No. B308/93, (p. 36), where the Board noted that community of interest is the test for determining an appropriate unit. An appropriate unit must have a rational and defensible boundary. Placing the location of the operations on the certification defines the bargaining unit in terms of a rational and defensible boundary.

In response, the Union argues that the description of the bargaining unit should be cast in generic terms which capture the intended scope of the bargaining unit. In arguing that addresses should not be included in the bargaining unit description, the Union relies on *Automatic Electric Ltd.*, BCLRB No. 26/76, [1976] 2 CLRBR 97 for the proposition that this is inconsistent with the Board's practice of utilizing generic terminology in bargaining unit descriptions. It also points to a number of certifications which do not include the addresses of the work sites in the descriptions of the bargaining unit.

The Union notes that the description of the bargaining unit determines not only the scope of the Union's certification but may well affect the necessity to apply for variances as changes occur. If the addresses are included, each time a change occurs, the Union would have to initiate

a variance application in order to keep the bargaining unit description current. Where the locations of the Employer's operations change from time to time this can be a significant administrative problem. The Union says within the past year there have been at least three changes in the addresses of the work site for the employees of Independent. The Union points out that *Island Medical Laboratories Ltd., supra*, does not address the question of multiple locations in a bargaining unit.

In response to the Employer's point that the description as presently framed would circumvent the requirements of the Code concerning employees at new operations, the HEU points out that a new location may well not be an expansion of the bargaining unit but a reorganization and included within the unit. See *Imperial Optical*, BCLRB No. 15/78.

IV. ANALYSIS

In an application for certification, a bargaining unit description should accurately reflect the employment environment of the parties. The purpose of certification is to get collective bargaining underway (see *Beverage Dispensers and Culinary Workers Union, Local 835 vs. Terra Nova Motor Inn Ltd.*, [1975] 2 SCR 749, 74 CLLC 14,253, 50 DLR (3d) 253). Once a collective agreement is negotiated, the terms and scope of the relationship between the parties is primarily defined by the collective agreement (see *Vancouver Museum and Planetarium Association*, IRC No. 194/90, 10 CLRBR (2d) 1; *Vancouver Symphony Society*, IRC No. C3/93, and *Watson and Ash Transportation Co. Ltd.*, BCLRB No. B96/93). As set out in *Automatic Electric (Canada) Limited*, BCLRB No. B26/76, [1976] 2 Can LRBR 97:

...if the union then wishes to expand the *scope* of its bargaining authority over a group of employees whom it has not hitherto represented, such as the sales staff in this case, it should first organize these employees (see *Olivetti Canada*, [1975] 1 Can LRBR 60). (p. 100) (Emphasis added)

As a result, where the inclusion of the employees constitute an expansion of the existing bargaining unit, the principles in *Olivetti Canada Ltd., supra*, apply. If a change by an employer

is a reorganization and not an expansion, the employees may be included within the unit: See *Imperial Optical*, BCLRB 15/78.

A concern the Board has at the time of the application for certification is whether the proposed unit description accurately reflects the essential character of the unit applied for. In some cases, a geographical unit description may be necessary to establish the boundaries and maintain the integrity of the proposed unit. See *ETL Environmental Technology Ltd.*, BCLRB B200/93.

The Union has requested a description incorporating "at and from". That request in and of itself suggests a specific location. Geographic unit descriptions refer to an employer's operation in a geographic area. The Union's application in effect does not recognize this difference. Cases where a broad geographical certification description has been granted depend on the facts, in particular the operations of the company involved. Bargaining rights may be at risk due to location change as a result of the loss and gain of client contracts, thereby affecting locations. In addition some transfer of personnel and equipment between locations may be demonstrated. See *International Simultaneous Translation Services Ltd. Tel Av Inc.*, IRC No. C110/91. None of these factors have been demonstrated in this case. The administrative concerns outlined by the Union are not sufficient for me to accede to the description requested by the Union.

The Board determines each certification on the facts that exist at the time the application is made. The facts here indicate there are a number of locations presently in existence for each Employer. Should an address change, an application for variance to reflect that change can be made to the Board. In each of the applications, I conclude the work site addresses should be included in the bargaining unit description. By doing so the bargaining unit accurately defines a rational and defensible boundary. That description will accurately reflect the essential character of the unit applied for.

Other certifications referred to by the Union for operations similar to Independent, reference a defined geographical area. No doubt the facts in those cases led to such a description. See *Bethseda Christian Association for Handicapped People*, B264/93. Regional certifications have been granted to maintain the integrity of the unit. In the two cases before me,

the HEU have not requested a defined geographical area. The HEU request has no limits whatsoever. Generic language has been used in bargaining unit descriptions to describe the employees. See *Automatic Electric, supra* (p. 99). The practice of using generic terminology does not extend to a "generic", thereby indefinite boundary. The inclusion of the work site locations are necessary to accurately reflect the boundaries of the bargaining unit.

In view of these conclusions, I have determined that the bargaining unit description should include the addresses of the work sites. I have reviewed each application and am satisfied that each complies with the requirements of the Code. The Union's applications are granted with amendments to the bargaining unit descriptions to indicate work site locations.

LABOUR RELATIONS BOARD

EMILY BURKE
VICE-CHAIR