

BRITISH COLUMBIA LABOUR RELATIONS BOARD

ETL ENVIRONMENTAL TECHNOLOGY LTD.

(the "Employer")

-and-

CONSTRUCTION AND GENERAL WORKERS' UNION, LOCAL NO. 602

(the "Union")

PANEL: Richard Longpre, Vice-Chair

COUNSEL: Enid J. Marian, for the Employer
Rick Edgar, for the Union

CASE NO.: 15618

DATE OF HEARING: June 16, 1993

DATE OF DECISION: June 29, 1993

DECISION OF THE BOARD

I. INTRODUCTION

This matter involves an application by the Union to vary a number of employees into an existing bargaining unit. The existing unit was recently certified and a first collective agreement has not yet been negotiated. The Employer agrees the proposed unit is appropriate for collective bargaining. There is no issue of trade status and the application is supported by sufficient employees to grant the variance without a representation vote.

The dispute concerns the certification description of the proposed bargaining unit. The existing certification is site specific:

Employees at and from 12345 - 104th Avenue, Surrey, B.C. except office and sales staff.

The variance application seeks to include employees at two other locations: 8655 Cambie Street, in Vancouver, and 360 Edworthy Way, New Westminster. The Union's application also seeks to vary the certification description to read:

Employees in the Greater Vancouver Regional District, except office and sales staff.

The Employer says the certification description should accurately reflect the new bargaining unit. That is, it should continue to be site specific rather than geographic.

No *vive voce* evidence was called at the hearing. The parties agreed to rely upon the Industrial Relations Officer's report. It was further agreed that the Employer intended to close the New Westminster location and move the employees to the existing Surrey location.

II. ARGUMENT

The Union argues the test for certification covers three issues: appropriateness, trade union status under the *Code* and membership. If all three are met by the Union, the Board has no discretion. We must certify the unit as proposed. The Union relies on *Fraser Lake Sawmills Ltd. v International Woodworkers of America et al*, (1980) 20 B.C.L.R. 210 (Wallis, J) for the proposition that the Board does not have the jurisdiction to vary a certification on its own motion.

The Union acknowledges that whether the unit description is site specific or geographic, the question of whether, in the future, new employees need to be organized will depend on whether the existing business is expanded or a new business created. In *International Simultaneous Translation Services Ltd. Tel Av Inc.*, IRC No. C110/91, the union sought a geographic unit description. The employer wanted a site specific unit description. Noting that the certification description cannot be used to sweep in groups of employees, the panel concluded:

Administrative and labour relations considerations favour the broader description suggested by the Union. It would be inconvenient to alter the certification with each and every location change arising from the loss of a contractor or the gain of a new one, particularly where the same employees or employee groups are merely moved from one location to another. The collective bargaining rights of such employees are efficiently protected by a bargaining unit description which refers to British Columbia generally rather than to a series of specific locations. The Employer must understand that a relocation of an existing operation or an expansion of an existing operation will find employees (even "future" employees) necessarily included in the bargaining unit. However, if the Employer establishes a genuinely new operation (a matter to be decided on the facts and law before a future panel), the mere fact that it is located within British Columbia will not relieve the Union from the requirement to organize the employees of that new operation. (p. 17)

The similar issue arose in *Robbins Parking Services Ltd.*, IRC No. C181/89. In that case, the union sought a geographic location description covering Vancouver Island and the Greater Vancouver Regional District ("GVRD"). The employer did not employ any employees in the GVRD. The panel concluded:

First, the bargaining unit applied for by the union is an appropriate bargaining unit. In our view, it is not necessary to show that the Employer has any operations within the geographic area in order for a bargaining unit described by a reference to that geographic area to be considered appropriate by the Council. On the facts of this case, and in view of the Employer's relationship with Imperial, a geographical unit description may be necessary to ensure the integrity of the bargaining unit. Under this description, if the Employer's contract for the management of a specific parking lot is not renewed, and it relocates its business to another parking lot, the Union will represent employees at the new lot, because this would amount to a relocation of the existing business. (p. 5)

The Employer relies upon *Crothall Services Limited (Western Region)*, IRC No. C52/88. There, the union applied for a unit description of all employees in B.C. The panel concluded, *inter alia*, that as the employees only worked at a single location, the geographic unit description was inappropriate:

The Council must look at the unit applied for and ensure that the description properly reflects the essential character of the unit. As noted above, the Employer's business is distinguishable from the numerous companies that make up the building maintenance industry. Each contract operates as a functionally distinct operation with separate on-site management. A province wide certification would go far beyond the bounds of the actual unit applied for. (p. 6)

The Employer notes that it operates at three locations, one of which, New Westminster, will soon close and its operations folded into the Surrey location. The Employer argues that the "essential character" should be reflected in the unit description. The Employer does not operate in several GVRD municipalities and there is no evidence of expansion occurring in the future. Absent this kind of evidence, there is no labour relations purpose to grant other than a site specific description.

The Employer says the Board has the jurisdiction to amend a certification description. If it is not appropriate to do so in this case, I should find the unit applied for is inappropriate and dismiss the application.

III. DECISION

At the outset, there is no dispute that the varied bargaining unit is appropriate for collective bargaining. I do not accept, however, the Union's argument that the Board has no jurisdiction to alter the proposed certification description of a unit found to be appropriate for collective bargaining. The Board is without jurisdiction to unilaterally amend the essential character of the proposed unit (*Fraser Lake Sawmills, supra*). Whether the description is site specific or geographic, however, does not alter the character of the unit. It remains the same employees working at the same locations. Equally important, the rights of the Union to represent future employees is not materially affected (*British Columbia Forest Products Ltd., BCLRB No. 8/82, International Simultaneous Translation Services Ltd., supra* and *Valley Rite-Mix Ltd., IRC No. C175/88*).

In considering the certification description, the Board generally considers two factors. First, does the proposed description accurately reflect the essential character of the unit being applied for (*Crothall Services Limited, supra*)? Second, is a geographical unit description necessary to ensure the integrity of the proposed unit (*Robbins Parking Services Ltd., supra*)?

In this case, I have some concern about the accuracy of the description as proposed by the Union. The Employer operates in only three of the GVRD municipalities; it will soon operate in only two. As noted in *Robbins Parking, supra*, that does not necessarily mean a geographic unit description is inappropriate. However, there was no *vive vice* evidence called at the hearing and no evidence which suggests the Employer intends to move any of its employees to a new location. As noted, one of the existing locations will soon disappear. Accordingly, the integrity of the unit will not be affected by the continuation of a site specific unit description. Finally, the existing certification is site specific. It is that unit which the Union seeks to expand. Absent a compelling reason, I do not believe the existing site specific description should be amended to a geographic unit description.

The parties agree the unit is appropriate for collective bargaining. There is no issue of the Union's status as a trade union under the Code. The application is supported by at least fifty-five percent of the employees who are to be varied into the bargaining unit. Accordingly, the

variance is granted. The two new locations will be added to the existing certification description.

LABOUR RELATIONS BOARD

RICHARD S. LONGPRE
VICE-CHAIR