

BRITISH COLUMBIA LABOUR RELATIONS BOARD

COSTCO WHOLESALE CANADA LTD.

(the "Employer")

-and-

OFFICE AND PROFESSIONAL EMPLOYEES'
INTERNATIONAL UNION, LOCAL NO. 378

(the "Union")

PANEL: Keith Oleksiuk, Chair
Barbara J. Junker, Acting Associate Chair
(Adjudication)
Laura Parkinson, Vice-Chair

COUNSEL: Lorraine Shore, for the Union

CASE NO.: 36562

DATE OF DECISION: June 3, 1998

DECISION OF THE BOARD

I. NATURE OF APPLICATION

1 The Union applies under Section 141 of the *Labour Relations Code* for leave and
reconsideration of BCLRB No. B167/98 (the "original decision"). The original decision
dismissed the Union's application for what would have been a second unit on the basis
that the presumption against multiple units had not been rebutted where an existing unit
in Burnaby was certified to another union. The Union asserts that the original panel's
decision is inconsistent with the principles 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*").

II. ANALYSIS AND DECISION

2 In seeking leave for reconsideration, an applicant must put forward a good
arguable case that may succeed on an established ground for reconsideration: *Brinco*
Coal Mining Corporation, BCLRB No. B74/93 (Leave for Reconsideration of BCLRB
No. B6/93), (1994), 20 CLRBR (2d) 44, 93 CLLC ¶16,043.

3 After reviewing the grounds advanced, we do not find that a serious question is
raised as to the correctness of the original decision. First, we do not accept the Union's
claim that the original panel disregarded geography as a factor. The issue of separate
locations was considered, but the geographical separation between the two locations
was not found to be significant. The original panel found that the two locations in
Burnaby and Vancouver were 12 kilometers apart, but they serviced the same zone (at
paragraph 26). The original panel also found that the two locations were sufficiently
close that the geographic distance was not as significant compared to other cases
where the two locations were separated by the far greater distance between Vancouver
and Vancouver Island (at paragraphs 31 and 33). We see no error of law or policy in
that determination.

4 Secondly, the Union quarrels with the original panel's assessment of the
importance of functional integration in determining whether it is appropriate to certify a
second unit. However, we see no error in the conclusion that the absence of functional
integration is not decisive; we agree with the reasoning of the original panel that, by
necessity, there would be an absence of functional integration in every application
involving a request for a second unit as otherwise the original unit would not have been
certified.

5 Thirdly, in addressing the standard that must be met by the applicant to rebut the
presumption against multiple units, we do not accept the Union's assertion that the
original panel has set a standard so rigorous that it is impossible to meet. We do not
read the original panel's decision to say that the applicant union must in all cases
produce evidence of experience with the particular union that is certified for the other

unit. What the original panel found was that, given both the lack of experience of the Union with this type of unit and with the other certified union, it could not rely solely on the Union's experience in different sectors in its relationships with other unions to overcome the presumption against multiple units. In other cases, it may well be that proof of a working relationship with another union in the same sector is sufficient, even though the applicant and the certified unit have had no past association. In those circumstances, more weight may be placed on the assurances of cooperation in coordinating bargaining and in negotiating common expiry dates. But, in this case, the original panel questioned whether the evidence led of this Union's general approach to collective bargaining in multiple certification situations and the experience of other unions in the retail food sector was even a valid comparison. Even assuming that it was of some relevance, the original panel found that the other factor of a lack of experience with the certified union did not answer industrial instability concerns about whipsawing and other potential problems in collective bargaining so that the presumption against a second unit was not rebutted.

6 On the other issue relating to industry evidence, we accept the Union's premise on the relevance of pre-*IML* patterns of bargaining. We agree that the fact that a pattern of certifications developed before *IML* does not make that experience irrelevant. In the assessment of appropriateness, the Board does not ignore bargaining history simply because of when a certification was granted; the Board looks to that practice to see if that experience resulted in industrial instability. Notwithstanding the original panel's comments in paragraphs 27 and 29, we find that the original panel did not simply dismiss the application because the industry evidence was pre-*IML*, but also because the multiple unit in one store certification pattern was not instructive where the application before it was for a second unit at a different location.

7 In its last ground for leave, the Union argues that the original panel's denial of collective bargaining to employees in the proposed unit would in fact promote industrial instability by encouraging disregard for the no-raiding pacts to which most unions subscribe. As the original panel noted, the Board recognizes that if there is a refusal by the incumbent union to represent these employees, the balancing of competing policy interests of facilitating industrial instability and granting access to collective bargaining may result in a different outcome in a future application. In this case, there are options, such as a poly-party application by the incumbent union and the Union, which would still permit observance of the no-raid pact, but yet meet the policy objectives of *IML*. We are thus not persuaded that any industrial instability said to result from this decision could not be avoided by measures permitted within the *IML* policy.

8 We find that the original panel properly considered all the factors relevant to determining community of interest at the second or additional stage of certification. The relevance and weight afforded the evidence relating to those factors was a matter of judgment for the original panel.

III. CONCLUSION

9 We conclude that the Union has not satisfied the requirements for leave for reconsideration. The application for leave is denied. In light of our decision to deny leave, it is unnecessary for us to consider the applications for interested party and intervenor status filed by the B.C. Federation of Labour, the Health Sciences Association, the Communications, Energy and Paperworkers Union of Canada and the International Woodworkers of America Canada.

LABOUR RELATIONS BOARD

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