

BRITISH COLUMBIA LABOUR RELATIONS BOARD

NATURAL GLACIAL WATERS INC.

(the "Employer")

-and-

BREWERY, WINERY AND DISTILLERY
WORKERS UNION, LOCAL 300

(the "Union")

PANEL: Frances R. Watters, Associate Chair (Adjudication)
Michael Fleming, Vice-Chair
Tony Hickling, Vice-Chair

COUNSEL: Chris Buchanan, for the Union

CASE NO.: 43090

DATE OF DECISION: September 8, 2000

DECISION OF THE BOARD

I. NATURE OF APPLICATION

1 The Union applies under Section 141 of the *Labour Relations Code* (the "Code") for leave and reconsideration of BCLRB No. B272/2000 (the "Original Decision"). The original panel granted a declaration that the Union's pre-strike vote was not valid for the purpose of Section 60 because the requirements of Section 59(1) had not been met. Specifically, the original panel found that the Union had not presented its wages and benefits proposal to the Employer in a manner that satisfied the requirement in Section 59(1) to have "bargained collectively".

II. REQUEST FOR CONSOLIDATION

2 The Union requests that its application for reconsideration be consolidated with another application for reconsideration, one filed by CUPE, Local 523, of BCLRB No. B217/2000 (Case No. 42811). It submits that both applications raise various issues pertaining to the proper interpretation of Section 59(1).

3 This matter was assigned to the same panel which has been assigned to decide the application for reconsideration of BCLRB No. B217/2000. Having reviewed both applications for reconsideration, we have concluded that it is unnecessary to consolidate the two. In the reconsideration of BCLRB No. B217/2000 the issue is whether the original panel erred in applying a two-fold test to Section 59(1); that is:

...there must be an exchange of proposals *and* there must be some discussion (an exchange of views) on all the key or central issues in dispute. (para. 18)

In the present case, the Union accepts that the Board must "determine whether the parties have exchanged proposals on the key items and whether the parties have discussed the proposals" (Union's submission of July 25, 2000, p. 5). It goes on to challenge the application of that test to the facts before the original panel. Thus, while both applications raise issues about the interpretation and application of Section 59(1), they do not raise the same issues. Nothing would therefore be gained by a consolidation of the two applications.

III. ANALYSIS AND DECISION

4 An application under Section 141 must meet the Board's established test before leave for reconsideration will be granted. An applicant must demonstrate "a good arguable case of sufficient merit that it may succeed on one of the established grounds 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. A *prima facie* case will not suffice; an applicant must raise a serious question as to the correctness of the Original Decision.

5 In its application for reconsideration, the Union submits that the original panel made a number of errors in its interpretation of the requirement to have "bargained collectively" in Section 59(1).

6 The Union first submits that the original panel erred by requiring the parties to have oral discussions on each key item. It argues the parties do not have to discuss orally every key item or proposal in bargaining in order to meet the requirement of Section 59(1) to have "bargained collectively". Instead, it argues that some, or indeed all, of the "discussion" may take place by way of the exchange of written proposals. We do not agree that the Original Decision requires oral discussion on the key issues. Nowhere is any such proposition stated in the Original Decision. No such requirement exists under Section 59(1) nor can the Original Decision be properly characterized as standing for that proposition.

7 At paragraph 5 in the Original Decision, the panel quotes a passage from the leading decision of *Citic B.C. Inc.*, IRC No. C170/91, (1992), 13 CLRBR (2d) 161 at p. 169, which states in part that "each party is expected to reveal its proposals for change in the collective agreement in their entirety before serious bargaining can get under way". We agree with the Union that this requirement does not necessarily mean that each proposal must be discussed *orally* in its entirety. It may be sufficient if these proposals are set out in writing, and an opportunity for questions and discussion is provided to the other party.

8 In the present case, the original panel clearly did take into account the Union's written proposals in determining whether the Section 59(1) requirement had been met. However, the original panel found the Union did not set out all of its key proposals, either in writing or orally. It found that the Union had expressly reserved the right to introduce later a package dealing with the wage scale and benefits, clearly two key items in any collective bargaining negotiation. That finding is not inconsistent with the agreed statement of facts presented by the parties and reproduced at pp. 2-5 of the Original Decision. Since the Union had not yet set out its key proposals (either orally or in writing), the original panel was entitled to find that the Union had not met the Section 59(1) requirement. It is evident on a fair reading of the Original Decision that the original panel's concern was not the form of the discussion (i.e., written proposals as opposed to oral discussion). Rather, it was the Union's express reservation of the right to introduce later a "wage scale and benefit package" which raised a concern for the original panel.

9 Second, the Union submits that the original panel erred by holding that parties must thoroughly discuss every item, not just key items before it can take a strike vote. We agree that the test under Section 59(1) is whether *key* items or proposals have been discussed. However, we find that this in fact is the test the original panel applied. As stated earlier, we find on a fair reading of the Original Decision that the Union was found

not to have met the test because it had not yet tabled all of its key items or proposals (the "wage scale & benefit package"). This was a finding of fact that the original panel was entitled to make, based on the Agreed Facts.

10 The Union says that the original panel's conclusion on this point will interfere with the practice of agreeing to bargaining protocols. In our view, it is open to the parties to agree to protocols wherein proposals are exchanged, the parties bargain first language items and then monetary items, and that they negotiate to impasse on an item before moving on to the next. In so doing, it makes labour relations sense to discuss and exchange views on the key items when the proposals are initially exchanged. The parties then know what the issues will be in bargaining and a pre-strike vote can then be conducted by an informed electorate. The parties are not obliged to discuss the key items when they are first tabled, but absent the requisite exchange of views, the Union cannot take a valid strike vote.

11 Third, the Union submits that the original panel erred in taking into account the Union's reasons for invoking its strike mandate in considering whether the Section 59(1) requirement had been met. Paragraph 8 of the Original Decision states:

Moreover, although not determinative of whether the Parties had bargained collectively in accordance with Section 59(1) of the Code, it appears from the evidence that the Union's service of strike notice which followed the May 30, 2000 pre-strike vote, was, in fact, a tactical move in response to an ancillary bargaining issue (see Agreed Facts #23 and #24).

12 We agree with the Union that a union's (or an employer's) motivation for serving strike (or lockout) notice is not relevant to the issue of whether the parties have bargained collectively under s. 59(1) of the Code. However, the original panel expressly recognized that its observation on this point was "not determinative of whether the Parties had bargained collectively in accordance with Section 59(1) of the Code". Not only was it not determinative, but the original panel provided reasons for reaching its conclusion on the Section 59(1) issue which are unrelated to the Union's motivation for serving strike notice. Accordingly, we find that this observation can be severed from the reasons for the Section 59(1) decision (the issue before the panel) and does not give rise to a reviewable error.

13 Fourth, the Union contends that while the original panel considered the Employer's conduct in assessing whether it ought to exercise its discretion to issue the relief sought, it failed to consider the Employer's conduct in determining whether the parties had bargained collectively.

14 The better view, in our opinion, is that two issues have to be addressed. The first is whether collective bargaining has in fact taken place. Delay and other tactics that frustrate the process may lead to the conclusion that the parties have not in fact bargained collectively. The question which then arises is whether, notwithstanding the lack of bargaining, the employer is entitled to have the vote set aside. If the reason for

the lack of bargaining is the employer's conduct, then on equitable grounds the Board may decline to declare the strike vote invalid.

15 We agree that even if an employer's conduct does not actually violate the specific provisions of the Code (i.e., the requirement to bargain in good faith), an employer which, without reasonable excuse, delays bargaining or limits the scope or quantity of discussion cannot then attempt to rely upon such delays or limited discussion to preclude the union from resorting to its economic weapons: see *Coast Master Hardwoods Inc.*, BCLRB No. B360/94, at p. 2.

16 In this case, it is clear that while the original panel did not directly consider the legitimacy of the Employer's explanation in the context of the first substantive issue, she had considered the Employer's conduct in the context of her exercise of the discretion and had accepted its explanation. She found that "there was a legitimate change in the composition of the Employer's bargaining committee and the Union subsequently agreed to continue bargaining despite the fact that the Employer's spokesperson had limited authority": at para. 9. Had the original panel found that the Employer had deliberately or unreasonably stalled the negotiations, it is plain that the decision would have been different. In these circumstances, we do not find a reviewable error. In substance it has been found that there was a legitimate explanation or excuse for the delay, regardless at which stage the conduct was considered.

17 Fifth, the Union submits that the original panel erred in concluding that the Union had not presented its complete wage and benefit proposal. It submits that this conclusion is inconsistent with the agreed statement of facts and the documents introduced. It submits that the Agreed Facts (Agreed Fact #14) make it clear that the Union submitted a wage proposal, and that it reserved only the right to later introduce a wage *table* or *scale* (Agreed Fact #12). It further submits that the Union did introduce a benefit proposal and reserved only the right to introduce "other benefit proposals and a wage table".

18 As set out in the Original Decision, Agreed Facts #12-14 state:

12. The parties signed an "Agenda for 2000 Negotiations" on April 3, 2000 [the "Protocol Agreement"]. This document set out the bargaining protocols to be followed at the table. Please note article 9(e), which states that the parties will table proposals, and that there can be no introduction of substantive new proposals. The Union asserted that it intended to submit further proposals later in negotiations, therefore, the handwritten clause "subject to Union introducing wage scale & benefit package" was added to article 9(e).

13. The Union tabled its proposals on April 3, 2000. The Union's proposals were based on the Okanagan Springs first collective agreement. The Union is the certified bargaining agent for Okanagan Springs Brewery, which operates a brewery and bottling facility in the Okanagan.

14. Near the end of the session, Mr. Radermaker asked the Union 'what about wages?'. Mr. Sutherland indicated that the wage demands would be based on the Okanagan Springs first agreement. He indicated that at Okanagan Springs the lowest paid employee went from \$7.75 to \$18.80 over the life of the 42 month agreement. Mr. Radermaker stated "I can see between the lines", or words to that effect.

(at p. 3)

19 In our view, the above agreed statement of facts does not lead inexorably to the conclusion that the Union presented its complete wage and benefit proposal package. The Union now argues that the reference in Agreed Fact #12 to the Union introducing a "wage scale & benefit package" was simply to a "formalized package" or reserving the right to submit additional proposals. It did not imply any substantive changes to the Union's written proposals on benefits and its oral discussions concerning wages, as set out in Agreed Facts #13 and #14. However, in our view, that is not self-evident on the face of the agreed statement of facts. On the face of those facts, we find that it was not unreasonable for the original panel to conclude that the Union had reserved the right to make substantive changes and additions to its tabled wage and benefit proposals. Accordingly, it was open to the original panel to find that the Union had not tabled its complete wage and benefit proposal package but was reserving the right to make substantive amendments or further proposals in later negotiations.

20 Finally, although not expressly raised as a ground for reconsideration, the Union expresses dissatisfaction with the original panel's finding that the Section 59(1) requirement to have "bargained collectively" was not met after four or five days of collective bargaining. It submits that there is no minimum time requirement to have bargained collectively. We agree with this proposition, but equally we note that there is no maximum time limit. The time required for the parties to have bargained collectively will depend on the circumstances of each case. The Union submits that it is "difficult to see how a strike vote could ever be considered premature after five days of face-to-face bargaining with an exchange of extensive written proposals". As a general statement, this proposition has merit. However, on the particular facts of this case, we are satisfied that the original panel provides adequate reasons for its conclusion.

21 In conclusion, the Union submits that the Original Decision alters the Board's existing jurisprudence on the requirements of Section 59(1). We do not find that to be the case. In particular, we confirm that the Board's existing jurisprudence continues to apply, including the following principles:

- While there must be an exchange of proposals and a reasonable opportunity for discussion (an exchange of views) on all the key or central issues in dispute, there is no requirement that every item or proposed change to the collective agreement be discussed.

- The requirement for discussion of key issues can be met by a combination of oral discussion and/or and written proposals, provided a reasonable opportunity to ask questions about and discuss the written proposals is provided.
- The motivation for serving strike or lockout notice is not relevant to a consideration of whether the Section 59(1) requirement to have "bargained collectively" has been met.
- The conduct of the party claiming relief may be considered in assessing whether the relief sought should be granted, particularly where it is found to have deliberately or unreasonably delayed or hindered the scope or quantity of negotiations or otherwise failed to bargain in good faith.

IV. CONCLUSION

22 For all of the above reasons, leave is denied and the Union's application for reconsideration is dismissed.

LABOUR RELATIONS BOARD

FRANCES R. WATTERS
ASSOCIATE CHAIR (ADJUDICATION)

MICHAEL FLEMING
VICE-CHAIR

TONY HICKLING
VICE-CHAIR