

BCLRB No. B431/95  
(Leave for Reconsideration of B393/95)

**BRITISH COLUMBIA LABOUR RELATIONS BOARD**

COASTAL FORD SALES LTD.

(the "Employer")

-and-

NATIONAL AUTOMOBILE, AEROSPACE TRANSPORTATION AND  
GENERAL WORKERS UNION OF CANADA (CAW-CANADA), LOCAL 3014

(the "Union")

PANEL: Laura Parkinson, Vice-Chair

COUNSEL: John Bowman, for the Union

CASE NO.: 28560

DATE OF DECISION: December 1, 1995

## **DECISION OF THE BOARD**

### **I. NATURE OF APPLICATION**

1           This is an application by the Union under Section 141 of the *Labour Relations Code* seeking leave to apply for reconsideration of BCLRB No. B393/95. The original decision dealt with an application for certification by the Union to represent parts and service department employees at the Coastal Ford dealership on Main Street in Vancouver. The original panel dismissed the application on the basis that the unit was inappropriate for collective bargaining as it was an application for a second unit and the presumption against multiple units had not been rebutted.

2           The Union seeks leave to apply for reconsideration on the grounds that the original decision is inconsistent with the principles expressed or implied in the Code. In particular, the Union alleges that the original panel misapplied the law and policy of *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. BACKGROUND**

3           The Employer has two geographically separate locations - one in Burnaby and the other in Vancouver. The Burnaby location has been certified to the International Association of Machinists and Aerospace Workers, Automotive Lodge No. 1857 (the "Machinists") since 1989.

4           The Union applied for a second unit at the Vancouver location of employees performing essentially the same work as those represented by the Machinists at the Burnaby location. The existing bargaining unit at the Burnaby location consists of 42 employees, and the proposed unit at the Vancouver location would have consisted of approximately 17 employees.

5           The evidence before the original panel indicated that inventory is shared through the transfer of parts between the two locations. Vehicles are also moved between locations to

facilitate sales. There was also evidence of the transfer of some work between locations as certain repairs could only be done at the Burnaby location.

6           The evidence relating to employee interchange between locations was limited to the transfer of four employees, of which only two employees were within the proposed bargaining unit. Apart from those transfers, service employees perform their work exclusively at one location or the other and do not move between sites in any significant way. Parts employees move between locations for the purposes only of taking inventory.

7           When the two employees in the existing Machinist unit at the Burnaby location obtained jobs at the Vancouver operation, the Employer contacted the Machinists regarding deduction of dues. The Machinists agreed to forego the dues for those employees.

8           At the administrative level, the two operations are integrated to a certain extent. There are separate accounting departments, but the Burnaby location has the main accounting department and the Vancouver operation only a partial accounting department.

9           Some financial reporting is done on a consolidated basis for the two locations, while other data is reported on a segregated basis. For internal accounting purposes, the Vancouver location is considered a separate profit centre. The Vancouver location is not considered economically viable by the Employer as a stand-alone operation, and prior to its take-over by the Employer had gone bankrupt. The Employer has the capability, on little or no notice, to close the Vancouver operation if it is not economic.

10          The general sales manager for the Employer oversees operations at both locations, although there is a separate manager for each location who reports in turn to the general manager.

11          Wages and benefits for employees at both locations are guided by common standards.

### III. THE ORIGINAL PANEL'S DECISION

12          The original panel found that as the application was for a second unit, the analysis in *IML*

required the Union to rebut the presumption against multiple bargaining units. The panel assessed all six of the factors identified in *IML* against the competing goals of fostering industrial stability and facilitating collective bargaining. In so doing, the original panel indicated no one factor was determinative of the issues, and the relative importance of each factor should be assessed against the circumstances of each case.

13           The original panel found that an assessment of the first four factors in *IML* of similarity of skills and working conditions, physical and administrative structure of the employer, functional integration and geography would not have resulted in any bar to the application for certification had the application been for a first unit. However, in assessing those factors together with the two additional factors in *IML* applicable to an application for a second unit (i.e. the practice and history of the current collective bargaining scheme in that place of employment and in the industry), the panel found the weight of evidence favoured dismissal of the application.

14           The original panel found that the employees at the two locations had an identity of skills, interests, duties and working conditions. Given that similarity in the work performed, the panel found there was a potential for differences to arise over work allocation if a second unit were to be certified. The panel concluded that a second certification cutting across identical classifications was an impediment to industrial stability and a factor weighing against separate bargaining units.

15           On the second factor, the original panel found some functional integration existed, but that the degree of functional integration would not, taken by itself, prevent a second unit. The panel also found that the factor of geography did not favour the Union's position. The fact of simple geographical separation, without more, did not justify multiple bargaining units and separate collective agreements. The panel noted that a physical separation in the face of a close functional relationship where a second unit and union may be involved becomes less meaningful.

In the circumstances before it, the panel concluded that the factor of physical separation was not significant, given the actual physical distance and the frequency of contact between the employees in the two locations through such means of communication as computer, fax and telephone. The panel also noted that no evidence was led to demonstrate any meaningful community of interest peculiar to either location.

16 On the issue of the physical and administrative structure of the Employer, the original panel found the large degree of integration of the reporting structure and administrative functions reduced the significance of separate locations. The original panel found that future plans of the Employer for re-organization of its operations would make that integration even more pronounced.

17 In considering the current collective bargaining regime, the original panel observed that little disruption had occurred in collective bargaining or in the administration of the collective agreement with the Machinists. However, the original panel did not accept that this peaceful bargaining history, standing alone, would satisfy the Board that an additional unit would not create instability. The original panel noted that the Union called no evidence to indicate that it could administer the second bargaining unit in a way that minimized instability. Apart from the potential risk of industrial unrest arising from leapfrogging, whipsawing and multiple strikes, the original panel found that competition for the same work between the two unions would have a real potential for collective bargaining disputes to escalate to both locations.

18 On the last factor of the history of collective bargaining in the sector, the original panel stated that no evidence had been led to assist it in determining the pattern of bargaining in this industry.

19 The original panel then addressed the Union's argument that if its application were dismissed, the employees would have no access to collective bargaining. The original panel considered the policy considerations of granting access to collective bargaining, but noted that there was no evidence that the employees had ever sought representation by the Machinists or the Machinists had ever turned the employees away. However, the original panel did indicate if the Machinists did not manifest any interest in representing the employees at the second location after the passage of time, the policy of granting access to collective bargaining may be given greater weight in any future application, notwithstanding the fact that such an application would be for an additional unit.

#### IV. APPLICATION FOR LEAVE

20 The Union argues that the original decision is based on a faulty analysis of *IML* and is,

therefore, inconsistent with the Board's policies on appropriate bargaining units. The Union argues that the *IML* decision did not deal specifically with workers at different geographic locations, and the passages cited from the *IML* decision by the original panel on cutting across classifications referred to classifications within a particular workplace.

21           The Union argues that it is wrong for the Board to hold that because one location is organized, a subsequent application is cutting across classification lines and should, therefore, be dismissed. In the Union's submission, the arguments about cutting across classification lines should be limited to situations within a specific location where there is a labour relations purpose for clearly defining bargaining unit work. The Union submits that an application for a particular geographic location, in most cases, should be viewed as an appropriate unit because it meets the community of interest test and is a unit around which a rational and defensible line can be drawn.

22           The Union argues that if the units are separate enough to be union and non-union, then they are separate enough to be represented by different unions if that is what the employees desire. If the certification of multiple units creates industrial relations problems in the future, the Board has the authority to deal with those problems under its consolidation power under Section 142 of the Code.

23           The Union argues that the original decision strips away the right of the employees at the Vancouver location to belong to the union of their choice and subsumes their interests forever to those of the much larger bargaining unit in Burnaby. According to the Union, the result of the original decision is to force employees into the union of the Employer's choice.

24           The Union also quarrels with the failure of the original panel to give any weight to the evidence on the Employer's right to terminate without notice the Vancouver operation while maintaining the Burnaby operation. The Union argues that this evidence demonstrates that the two operations are not completely inter-related. The Union also argues that the original panel over-stated the evidence when it found that work was "routinely transferred from one location to the other" (p. 12, para. 34).

25           The Union takes issue with the original panel's criticism of the Union's failure to lead any evidence on how it intended to represent employees at the second location. The Union argues

that it would be premature for any Union representative to predict what issues would occur in collective bargaining and what positions the members would wish to adopt on those issues.

26           The Union also disputes the original panel's suggestion that the appropriateness of the unit may be re-assessed in the future if the Machinists do not seek to represent the employees at the Vancouver location. The Union argues that if the unit would be appropriate in a future application, it is appropriate now.

V.     ANALYSIS AND DECISION

A.     Test for Leave

27           The test for leave for reconsideration formulated in *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, requires an applicant to demonstrate "a good arguable case" that it will succeed on an established ground for reconsideration.

B.     Geographic Separation

28           The nub of the Union's argument for reconsideration is that the separate locations justify multiple units. However, the original panel dismissed that argument on the basis of the evidence before it and its analysis of the applicable legal principles. The original panel found that the Union's reliance on the distinct geography of the two bargaining units was misconceived. I find no fault with the analysis of the original panel that geography alone does not establish a defensible boundary in a second unit application. The original panel properly recognized that the degree of significance attributed to the fact of geographical separation where a second application is pending is measured against industrial stability. The original panel acknowledged that while geography may be a mitigating factor in the design of a first bargaining unit where a defensible boundary cuts across classification lines, it did not follow that such a boundary across classification lines would necessarily be favourably considered in a second unit application.

29           Contrary to the Union's assertions, that analysis is consistent with the principles identified in *IML*. Under the analysis adopted by the Board in *IML*, at the second stage of

certification where there is at least one collective bargaining regime in place, the Board's concern is primarily with industrial stability. The presumption arises that industrial stability is adversely affected by a second unit. To rebut that presumption, an applicant will be required to bring cogent evidence to the contrary. The original panel concluded, in these circumstances, that insufficient evidence had been led to rebut that presumption.

C. Cutting Across Classifications

30 The Union further asserts that the fact pattern in *IML* did not involve a case where the application would have cut across classifications at different locations. While the particular facts in *IML* may not have dealt specifically with such an application, the policy statements articulated in *IML* transcend the facts in that case. In a comprehensive review of policy, the Board specifically addressed the principles to be applied to an application for a second unit. The Board ruled that at the second stage, in considering the potential for industrial instability, it will look at the relationship not just between the two bargaining units and the employer, but between the units themselves (p. 31).

31 Despite that statement from the Board that at the second stage its focus will include a consideration of the inter-relationship of the units, the Union argues that the concerns expressed in *IML* over the cutting across of classification lines should be limited to classifications within a particular workplace at the same location, not across geographic locations. In support of that argument, the Union points to a passage at page 31 of *IML* referring to the Board's reluctance to cut across classifications where all employees are in the same physical location.

32 I find this aspect of the Union's argument to be an unduly narrow reading of the language and the policy of *IML*. Elsewhere in the *IML* decision at page 32, the Board refers to its policy of avoidance of cutting across of classification lines, but without any reference to any qualification limiting it to one particular workplace. Equally, the general concerns identified in *IML*, and the specific issues raised by the original panel over the loss of opportunities for lateral mobility and the potential industrial instability resulting from competition over the transfer of work, arise where classifications are potentially divided among different bargaining units at different locations. I do not accept that the concerns over cutting across classification lines apply only where there is the potential for fragmentation of a particular workplace.

D. Employee Wishes

33 I turn to the Union's argument that the original decision denies the employees access to the collective bargaining agent of their choice. Employees' freedom of choice has traditionally not been a decisive factor in the analysis. As the Board noted in *IML* at page 27, the wishes of employees are not determinative of bargaining unit appropriateness. The presumption against certifying additional bargaining units is not rebutted by an argument founded solely on respect for employees' wishes: *Lafarge Construction Materials, A division of Lafarge Canada Inc.*, BCLRB No. B311/95, p. 9. Nevertheless, as alluded to by the original panel, employee choice can be respected through other means, such as having the union apply to represent them in a bargaining unit larger than, and inclusive of, the existing bargaining unit. As the original decision does not represent a departure from the prior policy of the Board on the weight to be given employee wishes, I reject the Union's argument that the decision represents an unwarranted intrusion into the issue of union selection by employees.

E. Potential Exercise of Consolidation Powers

34 The Union further argues that the Board may deal with any industrial instability resulting from separate units, if necessary, through its consolidation or variance powers. However, the original panel did not consider the potential exercise of the Board's Section 142 powers presented a viable alternative to the risk presented by multiple units. The reasons advanced by the original panel for avoidance of those after-the-fact remedies do not display any error in principle or policy.

F. Onus to Rebut Presumption Against Multiple Units

35 As for the significance of the failure of the Union to lead evidence relevant to the factor of industrial instability, the onus was on the Union as the party seeking to set aside the presumption against multiple units to offer compelling evidence to dispel concerns over the potential risks: *Lafarge, supra*, p. 8. In noting that the Union had failed to lead evidence on this issue to overcome that presumption, the original panel committed no error.

36 In summary on these grounds for reconsideration, I find the inquiry undertaken by the

original panel did not disregard the policies outlined in *IML*. That panel correctly applied the presumption against multiple bargaining units and properly recognized the increased emphasis given in *IML* to the factor of industrial stability where a bargaining unit presently exists. However, on the evidence, the original panel did not find the two locations to be functionally distinct operations which would justify separate units under the principles in *IML*.

G. Alleged Errors in Disregard of Evidence

37 To a large measure, the remaining issues raised by the Union's application represent an attempt to overturn findings of fact by the original panel or to re-argue the significance of the evidence. The Union's particular dispute with the original panel's conclusion on the frequency of transfer of work is no more than a quarrel with findings of fact. However, as a reconsideration panel, I am not entitled to second-guess the findings of fact reached by the original panel in considering the evidence on the issue of appropriateness of the bargaining unit: *Brinco, supra*.

38 The other error asserted by the Union is the alleged disregard of the evidence on the right to terminate the Vancouver operation. That ground for reconsideration represents another attempt to have a reconsideration panel review the assessment of evidence by the original panel. In its decision, the original panel does not ignore the evidence on that issue and, indeed, acknowledges that evidence at page 3 of the decision in its statement of facts. Clearly, as that evidence is recorded in the decision itself, it cannot be said that the original panel completely disregarded that evidence. At best, the Union's argument can only be a dispute over the weight to be given that evidence among all the competing factors which the panel had to weigh. Even if I were to entertain arguments based on the significance of particular aspects of the evidence before the original panel, I would not be prepared to presume from the fact that evidence is not expressly discussed in the reasons that the panel did not consider that evidence in its deliberations: *Charles R. McKenzie*, BCLRB No. 9/85, p. 3; and *Madden Metals Ltd.*, BCLRB No. 332/84, p. 4.

H. Change in Circumstances

39 Lastly, I see no error in the original panel's observation that the outcome of a future application may differ if there was evidence showing the lack of intent on the part of the

Machinists to seek representation of the employees at the other location. That panel correctly noted that evidence of such a change in circumstances may justify a different balancing of the competing policy interests of facilitating industrial stability and granting access to collective bargaining.

VI. CONCLUSION

40 As I conclude the Union has failed to meet the "good arguable case of sufficient merit" test, leave for reconsideration is denied.

LABOUR RELATIONS BOARD

LAURA PARKINSON  
VICE-CHAIR