



BRITISH COLUMBIA PROVINCIAL COUNCIL OF CARPENTERS

#305, 2806 Kingsway
Vancouver, B.C. V5R 5T5

Email: carpenters.bcpc@telus.net

Telephone: 604 437-0471
Facsimile: 604 437-1110

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Labour Relations Code Review Committee
1600 - 777 Dunsmuir Street
PO Box 10425 - Pacific Centre
Vancouver, BC V7Y 1K4

Dear Sirs/Madams:

RE: SUBMISSION TO THE SECTION 3 COMMITTEE

On behalf of over 8,000 members of the British Columbia Provincial Council of Carpenters (BCPCC), we present the following submission to the Section 3 Committee.

The issues we address are critical to the members of our union. The proposals we make directly seek to improve procedural fairness and deepen natural justice within the British Columbia Labour Relations Code.

ABOUT OUR UNION

BCPCC and its affiliated Local Unions are bona fide trade unions. BCPCC and its affiliated Local Unions are registered at the Labour Relations Board as the only unions representing the carpenter, carpenter-lather, and millwright crafts in the construction industry. We hold certifications and have continuing bargaining relationships with hundreds of employers and with employer bargaining agencies, such as the Construction Labour Relations Association.

In addition to traditional craft bargaining relationships, we have also forged modern all-employee bargaining relationships in recent years. Presently, over 10% of our construction membership is employed by construction companies whose construction workforce is exclusively represented by a Local Union and the BCPCC.

Significantly, we also represent over 2,000 members employed outside of construction. Through our affiliate local unions we represent school board employees, industrial manufacturers, and shipbuilders. Nearly every British Columbian benefits from the labour of our members every day.

We have 24 affiliated Local Unions, operating offices in 18 communities across all regions of BC. Since the late 1800s we have been one of the steadiest and strongest voices of BC workers.

The carpenters union in British Columbia is also affiliated to the BC Federation of Labour and the Canadian Labour Congress.

However, we are also affiliated to the United Brotherhood of Carpenters and Joiners of America, a relationship which speaks directly to the heart of Issue 11, a matter we will address later.

THE ISSUES

Issue 1: Definition of Employee – Should all members of a “management team” be excluded from Code’s definition of employee?

There is no requirement to change the definition of an employee. All members of the true “management team” should continue to be excluded.

The proposal outlined in the Terms of Reference of the Committee has the smell of allowing fidgeting with the eligibility of a voter’s list during an organizing drive. Presently, the Board determines eligibility of bargaining unit members on a case-by-case basis. The Board has shown in the past that despite what unions or employers may think about proposed bargaining units, a standard definition of employee should apply to keep consistency in labour relations. This consistency should continue.

The Code also allows the parties to negotiate new parameters by excluding / including certain employees from a bargaining unit. This practice should also continue since negotiations between the parties are more effective and efficient than involving the Board.

Issue 5: Changes in Union Representation (Section 19) – Should current raid periods as set out in Section 19 of the Code be changed?

There should be no further changes to Section 19 of the Code. In the construction industry the raiding period was previously set as July and August. The present provincial government, however, changed this Code provision so that the raiding period is now the 7th and 8th month of each year of the collective agreement.

We do not agree that the present Section 19 is disruptive to labour relations. Disturbances might occur if every raid resulted in a new round of collective bargaining. However, the Code currently requires that new bargaining agents inherit the collective agreement of the previous union. Moreover, the new bargaining agent cannot commence collective bargaining until the inherited collective agreement expires. Employers whose employees choose to switch their bargaining agent through raiding are relatively not affected.

We also note that this issue, along with Issue 8, involve the matter of transferring bargaining rights. Please also refer to our submission on Issue 11 to learn how we propose changes to Section 37 of the Code that would further soothe potentially disruptive transfers of bargaining rights.

Issue 6: Revocation of Bargaining Rights (Section 33) – Should the Code explicitly provide for partial decertification of a bargaining unit?

No. The union representation door must swing equally both ways. The present Board policy of seeking to create stable bargaining units during applications for certification by not allowing the creation of partial bargaining units would be contradicted by any Code change that allowed partial decertifications of existing bargaining units. The principles behind the leading case of *Island Medical Laboratories (IML)*, BCLRB No. B308/93 (Leave for Reconsideration of IRC No. C217/92 and BCLRB No. B49/93) would be nonsensical if partial decertifications were permitted, as being suggested.

The Board must analyse each application for decertification on its own fact line. This is how IML affects applications for certification and there must be consistency with decertifications.

Issue 7: Revocation of Bargaining Rights (Section 33) – Should a union’s certification be revoked after a lengthy closure?

There should be no specified period of time to trigger a decertification. The Board must analyse each application for decertification on its own merits.

The Board currently does not allow a union to rely on a certification or collective bargaining rights if an employer has had a lengthy hiatus from the industry (*Norspan Building Systems (B.C.) Ltd.* [1996] BCLRB No. 276, Case No. 30774.)

Moreover, the vast differences between BC industries make it impossible to come up with a specified time period that would be fair, balanced, and workable. Many construction employers, for example, continuously take a hiatus and then return to business months later. This is not the pattern in the public sector, for example.

Issue 8: Applications for Certification (Section 33(10)) – Where employees of a bargaining unit vote to decertify, should all unions, including the union that was decertified, have to wait for the same period of time before applying for a new certification?

There should be no time bar limiting any union making an application for certification of any bargaining unit. At present, there is indeed an imbalance in the application for certification rules affecting incumbent union and new prospective bargaining agents. The most efficient way to correct this imbalance is to eliminate time bars altogether.

Minimizing workplace disruption is the spirit behind the present Code provision of allowing incumbent unions the right to immediately reapply for certification after a decertification. This rule should apply to all unions. It is our submission that it is far less disruptive to have a continuance of union representation than for a workplace to encounter a union organizing drive 10 months after a decertification.

We also note that this issue, along with Issue 5, involve the matter of transferring bargaining rights. Please also refer to our submission on Issue 11 to learn how we propose

changes to Section 37 of the Code that would further soothe potentially disruptive transfers of bargaining rights.

Issue 9: Successor Rights and Obligations (Section 36) – Should a bankruptcy result in a union being decertified?

No. Allowing automatic decertification after bankruptcies would only lead to disharmony in collective bargaining and in the labour relations community. We predict that such a provisions would lead to an inordinate amount of decision-making burden being heaped onto the Board.

Construction employers, for example, are continually facing bankruptcy because most are not capital intensive. Those that do go bankrupt often quickly re-emerge with new financing and with new growth. We submit that not only will employees oppose this automatic decertification, but also many bankrupt employers who seek to build their business with their past skilled union employees.

Issue 10: Successor Rights and Obligations (Section 35) – Should some form of successorship apply when contracting out?

Yes. We support the Code providing successorship to employees who risk losing their jobs as a result of contracting out.

In construction, however, there should be no statutory regime that limits or prohibits subcontracting clauses in collective agreements. Subcontracting in construction is a legitimate matter for collective bargaining.

Construction is very different than other industries. It is mobile, not capital intensive, and subcontracting is common. Subcontracting in craft collective agreements is a complex and contentious issue and one that cannot be resolved through legislative change. During collective bargaining, many employers have long been seeking changes in regards to subcontracting collective agreement clauses and they should not be afforded these changes through Code reform. If the “free market” cannot sustain subcontracting clauses in construction then collective bargaining will soon reflect this.

Issue 11: Mergers of Union Locals (Section 37 and 150) – Should the Code govern the relationship between a local union and the national or international union that it is chartered under?

Yes. The BCPCC recognizes that labour relations in the BC construction industry are in need of reform. To this end it is necessary for trade unions to have the ability to reform their own affairs through mergers or transfers of jurisdiction in any way which is responsive to their membership wishes and interests.

However, at the same time the BCPCC currently faces difficulties as a result of the relationship that exists with our parent body headquartered in the United States.

We therefore propose Code amendments that would allow building trades and other unions, who are chartered by International unions, to maintain control over their own activities as trade unions in BC.

CONTEXT FOR OUR VIEWS ON ISSUE 11

Escalating American interference in the affairs of the BCPCC

The BCPCC relationship with the United Brotherhood of Carpenters and Joiners of America (the International) has long been acrimonious. This is partly based on each party's legal status in BC. While we are a bona fide trade union in BC with a Board recognized constitution and bylaws, the International is the legal equivalent of a club to which we are affiliated.

The International is not a bona fide trade union in BC and cannot and does not hold any certifications or bargaining relationships in BC. The BCPCC and its affiliated Local Unions hold all certifications and collective agreements of the Carpenters Union in BC and as such we are commonly referred to as "the BC Carpenters Union."

These facts have been verified numerous times by the Labour Relations Board. Re: *United Brotherhood of Carpenters and Joiners of America* BCLRB No. B77/2000, *Stearns Catalytic* BCLRB No. 112/85.

The BCPCC is headquartered in Vancouver and the International is headquartered in Washington, DC. Due to twists in history, however, we remain a club member of the International and as such have been frequently subject to American-based International

union initiatives that directly interfere with the affairs of the BCPCC and its affiliated Local Unions, and generally in labour relations in British Columbia.

The most recent interference from our US-based International commenced in 1995, when Douglas J. McCarron was elected General President at the International Convention in Las Vegas.

Almost immediately, McCarron set out on a centralization of power campaign, dubbed "restructuring", which sought to interfere in the business of State Councils, Provincial Councils, and Local Unions across North America.

In 1996, the BCPCC received McCarron's restructuring plan for BC. McCarron's program, which he expressly stated could not be altered or modified in any way. It contained the following actions that directly interfere in the business of the BCPCC.

1. International orders the forced merger of Local Unions, *without membership approval*.
2. International orders the termination of all existing elected union officials, including rank and file elected positions, *without membership approval*.
3. International orders the formation of new "Regional Councils," *without membership approval*.
4. International orders appointments of new officers to these Regional Councils, *without elections or membership approval*.
5. International orders implementation of new Provincial Constitution and Local Union bylaws, *without membership approval*.
6. International orders the transfer to new Regional Councils all bargaining rights and certifications of BCPCC and its affiliated Local Unions, *without membership approval*.
7. International orders transfers to new Regional Councils all assets and monies of BCPCC and Local Unions, *without membership approval*.
8. International orders termination of all pensions and benefit trustees with replacements to be appointed by International, *without membership approval*.

These facts are spelled out in a Board decision that denied the International the right to transfer bargaining rights, without membership approval, in three of our Local Unions, *United Brotherhood of Carpenters and Joiners of America* BCLRB No. B77/2000.

To date, the BCPCC and its affiliated Local Unions have held off this attack through expensive civil litigation and overwhelming membership support. In numerous referenda our membership has decidedly sought to defend their right to vote and their right to run their own union from BC, not from Washington, DC.

The International is the Plaintiff, and the BCPCC is the Defendant, in two Supreme Court of BC Claims

The International presently has two actions against BCPCC and its affiliated Local Unions at the Supreme Court of BC. In both cases, the International as Plaintiff, failed to achieve Summary Judgments against BCPCC. While we await a decision on the first trial, we expect another trial next year. Both Summary Judgments can be found on the web at <http://www.courts.gov.bc.ca>.

International interfering in BC economy by supporting Softwood Lumber Tariffs

As most British Columbians know, the US government's increase of softwood lumber tariffs is a direct attack on BC's economy. The International is one of the original petitioners that sought and achieved the imposition of these tariffs. The petition can be found online at <http://www.dbtrade.com> (follow links through "Selected Representation".)

The International's misconduct speaks volumes about why they should continue to not be recognized as a bona fide trade union by the Board. The International made its foreign policy and economic policy decision outside of BC without any consultation of BCPCC, even though BCPCC members were directly affected by the tariffs.

There are few better reasons than the softwood lumber crisis, for BC unions to propose Code reforms that would make it possible for Canadian unions to freely leave their US-based International.

International has suspicious agenda for BC pension plan

McCarron's restructuring plan for BCPCC, first announced in 1996, includes a provision to forcibly remove elected BCPCC's Carpentry Workers Pension and Benefit Plan Trustees and replace them with McCarron-approved appointments.

However, McCarron and other American union leaders are currently being investigated by a US Federal Grand Jury, the US Department of Labor, and the US National Labor Relations Board for misappropriation of union pension funds.

McCarron has admitted to personally enriching himself in a shady stock trading deal involving union funds. McCarron was personally profited with \$250,000 USD by using his position as a Director of Ullico Inc. to positively affect trades of personally held stock. This profit was to the detriment of the Carpenters Union pension funds he was representing while on the board of the private insurance company. McCarron has stated he will return the money but the investigations continue.

McCarron's restructuring initiative to replace elected BCPCC pension trustees with his own leaves us extremely uncomfortable.

PROPOSED AMENDMENTS TO CODE TO PROTECT BC UNION MEMBERS' RIGHTS

Based on our experiences with our International, we propose Code amendments that will strengthen union members' rights to union democracy and natural justice.

Section 37 - Merger or Amalgamation of Trade Unions

The current status of Section 37 of the Code is that it allows the Board to transfer certification rights and voluntary recognition rights from one union to another. In the exercise of that power the Board normally requires proof of employee support which is obtained by having a majority of employees in the affected locals or unions conduct a vote and give majority approval to the transfer.

In a number of decisions the Board has concluded that it cannot issue a Section 37 declaration unless the union's internal constitutional processes have been complied with. In

the case of all building trade unions and some other industrial unions, that process requires the approval of their International.

The Board has further ruled that it does not have jurisdiction to consider such constitutional disputes and that those are matters for the Courts.

Examples of this can be found in *Canadian Workers Union* BCLRB No. B398/94; *British Columbia Transit* BCLRB No. B499/98 upheld on reconsideration No. B501/99 and a case which involves our own dispute, *United Brotherhood of Carpenters and Joiners of America* BCLRB No. B77/2000.

Proposal to amend Section 37

It is our submission that the Board can effectively deal with matters that arise under the Code regarding the transfer of certifications or voluntary recognition rights. This can be accomplished with or without the approval of International unions that are not bona fide trade unions in BC. While disputes regarding a transfer of assets may require regulation by the Courts that should not prevent the Board from regulating labour relations matters.

We therefore suggest that Section 37(1) be amended to read as follows:

37. Merger or amalgamation

- 1. If trade unions wish to merge, amalgamate or transfer jurisdiction and are certified or voluntary recognized as the bargaining agent for a unit, the Board may, without approval of the trade union's national or international affiliate, in a proceeding before the Board or on application by the trade union concerned,*
 - (a) declare that the successor has, or has not, acquired its predecessor's rights, privileges and duties under this Code, or*
 - (b) dismiss the application.*

Section 150 - Trusteeship over Local Unions

Currently Section 150 provides limited control over Internationals that impose trusteeship on trade unions in the province. It requires those Internationals to file with the

Board a statement regarding the terms of the trusteeship and further requires the consent of the Board where the trusteeship lasts longer than 12 months.

Section 10 of the Code creates an additional degree of control by requiring such trusteeships to comply with the rules of natural justice. Neither Section 10 nor Section 150 gives the Board the power to restrict trusteeships where just and reasonable cause does not exist.

As we noted above, the BCPCC is particularly concerned with the incursions that the International has been making since 1996. These have affected our ability to function as a trade union in the province. Again, the International's interference has included the initiation of lawsuits at the Supreme Court of BC, interference with the administration of our collective agreements, interference with collective bargaining, and attempts or threats to impose trusteeships. Specifically, the BCPCC affiliated Local Union 1928, successfully resisted an attempt to us false allegations by the International to impose trusteeship 5 years ago.

Such interference is inconsistent with certain longstanding principles that have been embodied in the Code. These include:

- Trade unions must be local or provincial organizations. They cannot be a national or International organization.
- The exclusion of International unions was a deliberate policy by the Legislature to ensure that the affairs of a union would be regulated by the laws of the province.
- There is an important public interest, which underlies the regulation of collective bargaining and industrial disputes. It is therefore important that the regulation of trade unions be maintained within the province and that entities from outside the province not be permitted to import their policies or concerns through the use of trusteeships.

Examples of these issues can most easily be found in the decisions of *Re: Stearns Catalytic Ltd.* BCLRB No. 112/85.

Proposal to amend Section 150

The BCPCC proposes that the following subsection be added to Section 150 of the Code:

150(3) A provincial, national or international trade union must not assume supervision or control over a subordinate trade union except for just and reasonable cause.

It is our submission that the practical reality of such an amendment is that the workload of the Board would increase marginally if at all. The simple fact of the Code containing the suggested protection would deter Internationals from taking steps to interfere with the autonomy of British Columbia unions.

It is difficult to imagine any credible opposition to our proposed amendments to Section 150 of the Code. It is not uncommon for an International trusteeship hearing to be lacking natural justice. It has been our experience that just cause is absent in such hearings, which are characterized by a lack of right to legal counsel, a lack of the right to cross examine witnesses, the lack of a right to know the charges against a Local Union, etc. "Just Cause" language in Section 150 would go to ensure procedural fairness in any trusteeship proceedings.

It has also been our own experience that those Internationals who are wary of being brought before the Labour Relations Board would much prefer to litigate matters in Court.

Similarities of the laws of Ontario

Our proposed amendments to Section 37 and 150 are not unique. The Ontario Labour Relations Act contains strong provisions that protect Local Union members' rights to union democracy and natural justice. These provisions were implemented ten years ago under the Bob Rae NDP government.

Sections 147 and 149 of the Ontario Labour Relations Act deal expressly with the relationship between a Local Union and its parent union.

Our proposed amendment to Section 150 of the BC Code is similar to Ontario's Section 147(1), which states:

"A parent trade union shall not, without just cause, alter the jurisdiction of a local trade union as the jurisdiction existed on May 1, 1992, whether it was established under a constitution or otherwise."

And Section 149(1) of the Ontario Act:

"A parent trade union or a council of trade unions shall not, without just cause, assume supervision or control of or otherwise interfere with a local trade union directly or indirectly in such a way that the autonomy of the local trade union is affected."

-S.O. 1995 CHAPTER 1 Schedule A

And Section 149(2) of the Ontario Act:

"A parent trade union or a council of trade unions shall not, without just cause, remove from office, change the duties of an elected or appointed official of a local trade union or impose a penalty on such an official or on a member of a local trade union."

-S.O. 1995 CHAPTER 1 Schedule A

Clearly, our proposed amendments have met the test of practicality in the Ontario labour relations community.

CONCLUSION

We respectfully submit the viewpoints and proposals outlined above. We also request further consultation with the Labour Relations Code Review Committee.

Sincerely,

"L. G. Embree"
President

"David Flynn"
Secretary-Treasurer