

BRITISH COLUMBIA LABOUR RELATIONS BOARD

MVT CANADIAN BUS, INC.

(the "Employer")

-and-

AMALGAMATED TRANSIT UNION, LOCAL 1724

(the "Union")

PANEL: Ritu Mahil, Vice-Chair

APPEARANCES: Michael Korbin and Alexander Mitchell,
for the Employer
Amanda A. Rogers, for the Union

CASE NO.: 59875

DATE OF HEARING: October 26, 2009

DATE OF DECISION: October 26, 2009

DECISION OF THE BOARD

I. **NATURE OF THE APPLICATION**

1 The Union served 72-hour strike notice on the Employer on October 22, 2009. The full strike commenced on October 26, 2009, and the parties are now operating under the essential service order (the "Order") issued in *MVT Canadian Bus, Inc.*, BCLRB No. B201/2009.

2 Schedule "B" of the Order provides in part:

5. If the Union does not tender to the Employer any of the payments described [in the Order] by the 20th of each month the Employer will immediately cancel all health and welfare benefits for all bargaining unit employees. In such circumstances the Employer will pay a premium in lieu of health and welfare benefits of 12.2% to each bargaining unit employee for each hour that he or she works pursuant to the Essential Services Order from that date forward.

3 On Saturday, October 24, 2009, Dave Watt, Union President, wrote to the Employer stating in part:

At our union meeting of October 24, 2009 our members voted unanimously to have our benefits suspended for the duration of the strike. This will be effective October 26, 2009 as of [the] 1st shift Monday. Please notify the benefit providers as soon as possible.

4 The Employer seeks permission from the Board or a variance of the Order if necessary to immediately cancel health and welfare benefits.

5 The Union submits that there is no statutory right under Section 62, or any other provision of the Code, to cancel or suspend employees' health and welfare benefits during a strike or lockout period. It argues that Section 62 deals only with the continuance of benefits in certain circumstances which are not met in the present case. Therefore, it disputes the Employer's assertion that there is a "clear statutory right" to cancel employees' health and welfare benefits.

6 The Union further submits that paragraph 5 of Schedule "B" of the Order contemplates that any cancellation be subject to the terms of the applicable policies. The Union seeks clarification to that effect as it appears the Employer may be seeking to rely on the Board's Order to relieve itself of obligations under its policies. The Union further seeks a production of the insurance policies so that it can ensure that any cancellation is in accordance with the terms of the policy.

II. ANALYSIS AND DECISION

7

Section 62 of the *Labour Relations Code* (the "Code") provides:

- 62. (1) If employees are lawfully on strike or lawfully locked out, their health and welfare benefits, other than pension benefits or contributions, normally provided directly or indirectly by the employer to the employees must be continued if the trade union tenders payment to the employer or to any person who was before the strike or lockout obligated to receive the payment
 - (a) in an amount sufficient to continue the employees' entitlement to the benefits, and
 - (b) on or before the regular due date of that payment.
- (2) If subsection (1) is complied with
 - (a) the employer or other person referred to in that subsection must accept the payment tendered by the trade union, and
 - (b) A person must not deny to an employee a benefit described in that subsection, including coverage under an insurance plan, for which the employee would otherwise be eligible, because the employee is participating in a lawful strike or is lawfully locked out.
- (3) A trade union and an employer may agree in writing to specifically exclude the operation of this section.

8

A variance of the Order is not required in this case. The Order contemplates an immediate cancellation of the health and welfare benefits for all bargaining unit members if the Union does not remit its share of the payments by the 20th of the following month. The reference in paragraph 5 of Schedule "B" of the Order to the specific date on which payments would be due was made in anticipation of the Union choosing to maintain health and welfare benefits for members during the strike. Given that the Union has confirmed in writing and in its submissions this morning that it will not be continuing benefits in this manner, the Employer is entitled to immediately cancel the health and welfare payments. Neither Section 62 of the Code nor the Order require the Employer to continue benefits and then seek to recover its costs from the Union in the event that the Union does not seek continuation of coverage.

9

There is no evidence that such a decision would interfere with any contractual obligations between the Employer and the insurance provider. Further, I am not persuaded there is any reason for the Union to review contracts that are between the Employer and the insurance provider when the Union has declined coverage for its members throughout the strike. The Union's request for disclosure of such documents is denied.

10 In accordance with Schedule "B", the Employer will proceed to pay a premium in lieu of health and welfare benefits of 12.2% to each bargaining unit employee for each hour that he or she works.

III. CONCLUSION

11 For the reasons outlined above the Employer may cancel health and welfare benefits effective immediately.

LABOUR RELATIONS BOARD

"RITU MAHIL"

RITU MAHIL
VICE-CHAIR