

BRITISH COLUMBIA LABOUR RELATIONS BOARD

UNIVERSITY OF BRITISH COLUMBIA

(the "Employer")

-and-

CANADIAN UNION OF PUBLIC EMPLOYEES,
LOCAL 2278

-and-

CANADIAN UNION OF PUBLIC EMPLOYEES,
LOCAL 116 (U.B.C. EMPLOYEES)

(together the "Union")

PANEL: Ken Saunders, Vice-Chair

APPEARANCES: Martina A. Quail, for the Union
Michael H. Korbin and Judith A.
Macfarlane, for the Employer

CASE NOS.: 58978, 58979

DATE OF DECISION: February 19, 2009

DECISION OF THE BOARD

I. **INTRODUCTION**

1 The Union complains that the Employer contravened Section 6(1) of the *Labour Relations Code* (the "Code") by asking its employees to complete a survey identifying workplace issues.

2 The Union seeks an interim order restraining the Employer from circulating the survey until the complaint is decided. The Union also seeks a declaration that the Employer has contravened the Code and an order that the Employer circulate the Board's decision to its employees.

3 This decision is based on the Union's application and submissions at a pre-hearing conference call on February 18, 2009. I have assumed the facts asserted by the Union are true for the purposes of this decision.

II. **BACKGROUND**

4 On January 29, 2009 the Employer told the Union it would circulate a questionnaire to its employees. This is called the Workplace Experiences Survey. It is scheduled to begin February 23, 2009. The Employer told the Union the survey is intended to identify and measure workplace issues and to devise strategies for improvement in the workplace.

5 The Union had no part in creating the survey and does not agree with its use by the Employer.

6 The survey will be distributed in paper form at the workplace. Employees will be allowed to complete the survey during working hours. Completion of the survey is voluntary. The Union asks the Board to infer from these circumstances that employees will feel obligated to complete the form.

7 This is not the first time the Employer has surveyed its employees. The Employer did this before the last round of bargaining. The Union asserts the last survey was not to the same extent, or at the level of sophistication as the present survey.

8 The Employer used the results of the former survey when making representations during the last round of collective bargaining. For example, the Employer relied on that survey to support its contention that the Union was not properly representing the issues.

9 The current collective agreements expire in 2010.

III. ANALYSIS AND DECISION

10 The issue is whether the application discloses a contravention of Section 6(1) of the Code. Section 6(1) reads as follows:

6. (1) Except as otherwise provided in section 8, an employer or a person acting on behalf of an employer must not participate in or interfere with the formation, selection or administration of a trade union or contribute financial or other support to it.

11 The Union submits that the Employer contravened Section 6(1) by seeking information directly from employees. The Union contends that the Employer has done this to prepare for the next round of collective bargaining and as part of an ongoing strategy "...for overriding the union's identification and prioritization of issues during bargaining". The Union submits:

The employer is bypassing and interfering with this [the Union's] exclusive authority to identify and table issues by seeking information directly from the members of the bargaining unit through the use of the Workplace Experiences Survey.

12 An employer has the right to communicate with its employees provided it does not use coercion or intimidation, or otherwise contravene the Code. That right includes asking employees questions about workplace issues and soliciting suggestions for improvement.

13 An employer's right to communicate was aptly set out by Chair Weiler in *B.C. Sugar Refining Co. Ltd.*, BCLRB No. B49/78 ("*BC Sugar*"). In that case, the Board ruled that exclusive bargaining agency does not give a union the exclusive right to communicate with employees:

Rather, we want to state emphatically that the trade union is not granted a lock on the minds of the employees when it obtains the certification to represent them. Anybody can communicate with the employees, including their employer. (Assuming of course, that there is no coercion, intimidation, or attempt to undermine the bargaining rights of the trade union.) Indeed, the ultimate freedom lies with the employees. They are free to read these bulletins if they so desire, or to discard them if that is their pleasure. (pp. 12-13)

14 The Union does not contend (correctly in my view) that surveying employees amounts to the use of coercion or intimidation. Rather, the Union says the survey contravenes Section 6(1) *per se* because it undermines the Union's status as the employees' exclusive bargaining agent. The Union submits that the relevant context includes how the Employer has previously used survey results in bargaining.

5 Section 27 of the Code defines the principle of exclusive bargaining agency. That principle dictates that the Union has the exclusive authority to bargain collectively for the unit and to bind it by a collective agreement until the certification is cancelled. As a corollary, the Employer must bargain with the Union, not with the employees. Bargaining with the employees offends the duty to bargain in good faith and as such, interferes with the administration of a trade union within the meaning of Section 6(1). This type of conduct is one exception to an employer's right to communicate.

16 In my judgment, the Employer's initiative falls well within its right to communicate with its employees. The facts asserted by the Union do not show that the Employer is engaged in a direct or indirect attempt to bargain with its employees. Moreover, the Employer's survey does not undermine the Union's exclusive bargaining agency by overriding the Union's right to collect its own information from employees or the Union's ability to identify and prioritize bargaining issues. That is something the Union remains free to do on its own through its democratic processes. The Union may then rely on the strength of that mandate when responding to the Employer's assessment of the Union's proposals at the bargaining table. Accordingly, I reject the Union's submission that the effect of taking the survey amounts to interference *per se* within the meaning of Section 6(1).

17 Further, the fact the Employer has previously used the results of a similar survey in an attempt to refute the merits of the Union's proposals does not assist the Union's case. That sort of bargaining table dialogue is part-and-parcel of the collective bargaining process. It does not make the survey an act of interference under Section 6(1) of the Code.

18 Lastly, the Union has asked me to infer from all the circumstances that the employees will be under some pressure to complete a voluntary survey. In my judgment, Chair Weiler's analysis in *BC Sugar* provides an appropriate response. The ultimate freedom to answer the Employer's questions lies with the employees, all of whom are adults. They are free to complete the survey if they so desire, or not to if that is their pleasure.

IV. CONCLUSION

19 The application is dismissed.

LABOUR RELATIONS BOARD



KEN SAUNDERS
VICE-CHAIR