

**BRITISH COLUMBIA LABOUR RELATIONS BOARD**

PBC HEALTH SERVICES SOCIETY (CARRYING ON  
BUSINESS AS PACIFIC BLUE CROSS), MSA BUSINESS  
SERVICES LTD. AND BRITISH COLUMBIA LIFE AND  
CASUALTY COMPANY

(the "Employer" or collectively, "PBC")

-and-

CANADIAN UNION OF PUBLIC EMPLOYEES, LOCAL  
1816 (MEDICAL SERVICES ASSOCIATION EMPLOYEES)

("CUPE")

-and-

PBC HEALTH BENEFITS SOCIETY OPERATING AS  
D.A. TOWNLEY

("DA Townley")

-and-

CANADIAN OFFICE AND PROFESSIONAL EMPLOYEES UNION,  
LOCAL 378

("COPE")

PANEL: Jennifer Glougie, Vice-Chair

APPEARANCES: Gregory J. Heywood, for PBC  
Allan E. Black, Q.C., for COPE

CASE NO.: 69657

DATE OF DECISION: October 6, 2016

## DECISION OF THE BOARD

### I. NATURE OF APPLICATION

1 The Employer applies under Section 35 of the *Labour Relations Code* (the "Code") for a declaration that it is the successor employer to DA Townley. PBC's employees are represented by CUPE and DA Townley's employees are represented by COPE. The Employer also seeks an order consolidating the two existing bargaining units on the basis that the two operations are in the process of being integrated. Since the CUPE unit is significantly larger than the COPE unit, the Employer seeks an order cancelling the COPE certification without a representation vote.

2 COPE agrees a successorship has occurred; indeed, COPE applied for and was granted a declaration to that effect in 2015. However, it says an order for consolidation is inappropriate since, to date, there has been no intermingling of employees between the two operations. COPE says the facts on which the Employer relies have not sufficiently crystallized to justify the declaration sought. It further says the Employer's application lacks a labour relations purpose and is made in bad faith.

3 I am able to decide this matter on the basis of the written submissions filed by the Parties without the need for an oral hearing.

### II. BACKGROUND

4 PBC is a benefits provider that, along with its subsidiary, British Columbia Life & Casualty Company, provides health, dental, life, disability and travel coverage for British Columbians through individual and employee group plans. It also provides third-party administration for pension and health benefit trusts. CUPE represents approximately 640 employees within the PBC bargaining unit.

5 DA Townley is a firm of group benefit plan consultants and administrators that provides benefit programs to corporate employers. COPE is certified as the bargaining agent for the office and technical employees at DA Townley's operation and has been since 1966. There are approximately 37 employees in COPE's bargaining unit.

6 On or about January 1, 2015, PBC acquired the business of DA Townley by way of an asset purchase. COPE applied for and was granted a declaration that PBC was the successor employer to DA Townley. As a result of that declaration, the Board amended COPE's certification on May 6, 2015, to read as follows:

office and technical employees at 160 – 4400 Dominion Street,  
Burnaby, BC except those excluded by the Code, employed by  
PBC Health Benefits Society operating as DA Townley 160 – 4400  
Dominion Street, Burnaby, BC V5G 4G3

7 On January 8, 2015, shortly after the acquisition, PBC posted an announcement on its website which said, in part:

As a wholly-owned division of Pacific Blue Cross, the firm will operate under the trade name D.A. Townley. However, the 50-year-old company will remain in its current location and operate separately from Pacific Blue Cross [PBC] on an ongoing basis. Both organizations are located in Burnaby, British Columbia. (emphasis added)

Consistent with the announcement, the Employer has operated DA Townley as a separate division of PBC since January 1, 2015. The Employer says, however, this is in the process of changing. It says it now intends to fully integrate the employees and systems of the two operations rather than continue to operate DA Townley independently.

8 Jan Grude, the Employer's President and Chief Executive Officer, issued a memo dated May 11, 2016 outlining the decision to integrate the two operations and setting out the plan by which that integration would be accomplished (the "Integration Plan"). The Employer summarized the goals of the Integration Plan as follows:

The Integration Plan provides for the following changes to be completed by the end of December 2016:

- (a) the integration of DA Townley's outdated computer systems into PBC's claims administration platform;
- (b) the relocation and integration of DA Townley's claims adjudication staff to PBC's claims division at PBC's office;
- (c) the relocation and integration of PBC's administrative services employees to DA Townley's office;
- (d) the integration of time capture/management system; and
- (e) the integration of marketing, corporate communications, human resources, change management, office services, and legal counsel staff and services.

9 The Integration Plan provides the following timeline by which the various aspects of the integration would be implemented:

Month (2016)	Action	Status
April	<ul style="list-style-type: none"> <li>• advise PBC and DAT employees of proposed integration plans</li> <li>• provide Section 54 notice to CUPE 1816 and COPE 378</li> </ul>	<ul style="list-style-type: none"> <li>• completed</li> </ul>

May-September	<ul style="list-style-type: none"><li>• engage in Adjustment Plan discussions with CUPE 1816 and COPE 378</li><li>• develop detailed technology and business process integration plans</li><li>• develop detailed change management/communications plans for employees and clients</li><li>• develop integration plans for time management system</li><li>• develop integrations plans [sic] to transfer existing DAT clients to PBC platform for claims adjudication and servicing processes</li></ul>	
Sept-December	<ul style="list-style-type: none"><li>• execute integration plans including relocation of staff</li></ul>	

10 The Employer says a dedicated integration project manager has been hired to oversee the integration of systems and employees and says certain aspects of the Integration Plan have already been implemented. Specifically, the financial reporting for both PBC and DA Townley have been integrated and the transfer of DA Townley's client accounts to BASYS, PBC's client management platform, has begun. Certain DA Townley employees have been trained on BASYS and ACES, PBC's claims management software. Joint training sessions on PBC's new accounting software were expected to occur in July 2016 and DA Townley employees have been instructed to use PBC's IT Helpdesk. DA Townley employees have started using PBC marketing templates to present proposals to DA Townley clients. The Employer anticipates the payroll system for both units will be centralized as of January 1, 2017.

11 With respect to the integration of PBC and DA Townley employees specifically, the Employer says an integration steering committee has been formed consisting of senior PBC managers as well as DA Townley's CEO. It further says an integration program has been approved by management and a "detailed plan" for such integration has been initiated, although a copy was not attached to either the Employer's application or its reply submission.

12 The parties agree the proposed relocation of employees outlined in the Integration Plan has not yet occurred. Moreover, despite the intention set out in the Integration Plan that the relocations would occur by the end of 2016, the Employer now anticipates certain employees will not be relocated until June 2017. While the 10 PBC

administrative services employees will be relocated to DA Townley's office effective January 1, 2017, the 10-14 DA Townley claims adjudicators will not be relocated to the PBC office until June 2017 once the PBC office has been renovated to accommodate them.

13 The current collective agreement between PBC and CUPE expired on July 31, 2016 and the current collective agreement between DA Townley and COPE expires on December 31, 2016.

### 14 III. POSITION OF THE PARTIES

14 The Employer says a successorship between PBC and DA Townley has occurred and the two existing bargaining units should be consolidated because it intends to integrate the two operations. It says many of the steps outlined in the Integration Plan are underway or complete, including: the migration of DA Townley clients to the PBC client management software, the migration of PBC's applications and data to PBC's storage system, IT training and support, human resources and market systems, and financial reporting. With respect to employee integration, the Employer says a detailed plan for such integration is in the process of being developed. Certain DA Townley employees have been trained on PBC's BASYS and ACES computer programs and joint training sessions on the Employer's new accounting software have already occurred. Finally, the Employer says that certain employees will be physically relocated from the PBC office to the DA Townley office effective January 2017 and others will be relocated from the DA Townley office to the PBC office in June 2017. The Employer notes that the two offices are located in Burnaby and are within approximately 500 metres of each other.

15 The Employer says members of the two bargaining units perform the same work, namely, providing and administering benefit plans, for the same employer. Once the integration is complete, the Employer says the 37 COPE members will be "interspersed throughout the PBC operation"; employees of PBC and DA Townley will work "alongside members of the other doing the same jobs, sometimes in the same offices, under the same administrative and management structure". As a result, the Employer says, a single bargaining unit is appropriate to represent the integrated unit on the basis of the factors set out in *Island Medical Laboratories Ltd.*, BCLRB No. B308/93 (Leave for Reconsideration of IRC No. C217/92 and BCLRB No. B49/93), 19 C.L.R.B.R. (2d) 161 ("*IML*").

16 The Employer says there is a labour relations purpose to its application; namely, the fact that its collective agreements with both CUPE and COPE are expiring in 2016. The Employer says it makes no labour relations sense to negotiate new collective agreements for both units when it is in the process of integrating the two operations.

17 COPE opposes the Employer's application on two bases. First, it says, the Employer expressly committed to maintaining DA Townley as a distinct and separate operation and that the present application, being contrary to that commitment, constitutes bad faith in its dealings with both COPE and the DA Townley employees. It relies on the recent Supreme Court of Canada decision in *Bhasin v. Hrynew*, 2014 SCC 71 ("*Bhasin*"), in that regard. Second, COPE says, the Employer's application does not meet the Board's test for granting anticipatory declarations set out in *First Commercial Management Inc.*, BCLRB No. B213/93 ("*First Commercial*"). COPE says the Board's policy is not to order declaratory opinions unless the facts have sufficiently crystallized and a valid labour relations purpose is established, neither of which, it says, are satisfied in the present case. COPE says no integration of employees has taken place and, until the integration the Employer proposes to implement has taken place and is a certainty, the facts have not crystallized so as to allow the Board to make any such declaration. Finally, it says the Employer has failed to establish a labour relations purpose for its application. COPE relies on *ClearTech Holdings*, BCLRB No. B83/2015, 264 C.L.R.B.R. (2d) 254 ("*ClearTech*") to argue that, even where change is imminent, the Board will refrain from ordering an anticipatory declaration unless both criteria from *First Commercial* are satisfied.

18 By way of reply, the Employer says it does not owe a duty to operate PBC and DA Townley as separate operations and, as a result, no duty has been breached. It points out that its corporate decision to integrate the two operations was made for legitimate business reasons: namely, to provide better service, systems and products to its customers, while maintaining the independence expected of a third-party administrator. It further says its application for consolidation is not anticipatory because the successorship has already occurred and significant steps to integrate the two operations have already been taken. With respect to the labour relations purpose for its application, it says:

There is an imminent prospect of labour relations conflict and a valid labour relations purpose because of the pending physical relocation of DA Townley and PBC employees, their close working relationships which have already begun to form, and the upcoming expiry of both the COPE and CUPE collective agreements.

19 CUPE did not participate in the submission process.

#### IV. ANALYSIS AND DECISION

20 As noted above, COPE applied for and was granted a declaration that PBC was the successor employer to DA Townley in early 2015. As a result, the Employer's application for a successorship declaration under Section 35 of the Code is moot.

21 The consequences of the successorship, however, remain outstanding. The Board's authority to determine the consequences of a successorship on the resulting bargaining unit(s) is set out in Section 35(5) of the Code, which provides, in part:

### Successor rights and obligations

- 35(5) The board, having made an inquiry or directed a vote under this section, may
- (a) determine whether the employees constitute one or more units appropriate for collective bargaining,
  - (b) determine which trade union is to be the bargaining agent for the employees in each unit,
  - (c) amend, to the extent it considers necessary or advisable, a certificate issued to a trade union or the description of a unit contained in a collective agreement...

Under Section 35(5), the Board must determine whether two units remain appropriate for bargaining and, if not, whether a vote should be held to determine which bargaining agent will continue to represent the employees in the consolidated unit.

22 In the present case, the affected employees have already chosen their respective bargaining agents; the PBC employees chose to be represented by CUPE and the DA Townley employees chose to be represented by COPE. As the Board said in *Kelly Douglas & Company Limited*, BCLRB No. 8/74, [1974] 1 Canadian LRBR 77 ("*Kelly Douglas*"):

Of course, there are special features of s. 53 [now s. 35] situations which must be taken into account. For example, in exercising our discretion to determine the appropriateness of a unit for collective bargaining under s. 53(3), we will not necessarily follow the same precedents used in original applications for certification covered by s. 42. Special weight must be given to the fact that there was an identifiable group of employees who chose a union which bargained successfully on their behalf. That choice should be preserved as far as is reasonably possible. ...Still, though, it must be possible to draw a rational and defensible line around the special unit which is to be preserved. ... (at p. 84)

23 The Board will not, however, attempt to preserve a bargaining unit that it no longer considers is appropriate for collective bargaining: *Boston Bar Lumber and Timber Workers' Association et al.*, BCLRB No. 23/76, [1976] 1 Canadian LRBR 380. Rather, the Board will analyse the operational and organizational structure of the successor employer and consider the factors set out in *IML* to determine whether a rational and defensible line can be drawn around the pre-existing unit: *Insurance Corporation of British Columbia*, BCLRB No. B157/97, 35 C.L.R.B.R. (2d) 117; *Kelly, Douglas & Company Limited*, BCLRB No. 26/85 (Appeal of No. 372/84).

24 The parties agree that, since the asset transfer in January 2015, the Employer has operated DA Townley as a distinct and separate entity consistent with the commitment in its January 8, 2015 announcement. The Employer has established that, in early 2016, it made a corporate decision to integrate aspects of the two operations rather than maintain DA Townley as a separate and distinct operation. While some aspects of the Integration Plan have been implemented, others will not take effect until the end of 2016 or as late as June 2017. The Employer relies on the steps it has taken, and intends to take, to integrate the two operations to argue that separate units are no longer appropriate for bargaining.

25 On the basis of the steps the Employer has taken to implement the Integration Plan, I am satisfied the Employer's computer platform, business systems, administration and management structure are or will be integrated as between PBC and DA Townley. The question at issue, however, is whether the employees of PBC and DA Townley are sufficiently intermingled at this time to warrant consolidating the bargaining units.

26 The Employer says "close working relationships" have already begun to form between the employees of PBC and DA Townley, however, neither the Integration Plan nor the facts set out in its application establish any intermingling of employees between the two operations at the present time. It does not say employees share duties on a day-to-day basis or at all. While I am satisfied DA Townley employees perform similar work to PBC employees, the written submissions suggest that DA Townley employees continue to service DA Townley clients out of DA Townley's geographic operation and PBC employees continue to service PBC clients out of PBC's geographic operation, with no evidence of intermingling. The fact that employees attend joint training sessions is not sufficient to establish regular and consistent functional integration between the employees within the two units. On the basis of the factors set out in *IML*, therefore, a rational and defensible line can continue to be drawn around the pre-existing DA Townley unit within PBC's overall structure.

27 The Employer relies on its intention to relocate the PBC administrative services employees to the DA Townley operation and the DA Townley claims adjusters to the PBC operation as evidence of integration warranting the consolidation of the two units. In light of the fact the proposed relocations have not occurred and are not scheduled to occur until 2017, I agree with the Union's submission that the application for a consolidated unit is anticipatory. In *First Commercial Management Inc.*, BCLRB No. B213/93 ("*First Commercial*"), the Board set out the test to be applied before an anticipatory order will be granted: the facts must have sufficiently crystallized and there must be a labour relations purpose to the declaration (at p. 6). As the Board held in *Futura Forest Products Ltd.*, BCLRB No. 20/86:

Where the Board is asked to determine whether a proposed transaction will give rise to a successorship, no one is in a position to guarantee with certainty what will follow. A purchaser can only speak to his present intentions. These intentions, however honestly expressed at the time, may well change. As noted in *PG Industries, supra*, a declaration made the day before the closing



date of a transaction may be worthless a month later. Further, even if the actual facts differ only slightly from the original intentions, the unsuccessful party will no doubt feel compelled to relitigate the issue. In many cases, therefore, a declaration will not serve the purpose of unequivocally resolving the respective rights and obligations of the parties. (at pp. 12-13)

The Board's policy recognizes that neither an employer nor a union can guarantee with certainty what may or may not come to pass in the future.

28 At issue, then, is whether the Employer's plan for the future relocation of employees is sufficiently "crystallized" so as to justify the anticipatory order sought. I am not satisfied that it is. The Board discussed "crystallization" in *ClearTech*, where it held:

With respect to the first part of the test, whether the facts have sufficiently crystallized, ClearTech disagrees with the Union that its application ought to wait until the actual closure of Miraclean in Richmond and the actual start-up at Advance Chemicals in Port Coquitlam. ClearTech says there is no uncertainty that equipment will move to Port Coquitlam during the week of May 11, 2015 and production will start shortly thereafter. Although ClearTech's intended actions may take place in the near future, I find at this time the facts have not sufficiently crystallized. As set out in the quote above, the Board is not only concerned with the terms of the transaction but what actually happens once the transaction is completed. The Board also noted that intentions, however honestly expressed at the time, may change. I find these considerations apply in the case at hand. I agree with the Union's submission that at present there is a lack of factual particularity as to what will occur after the transfer of the business. (at para. 17, emphasis added)

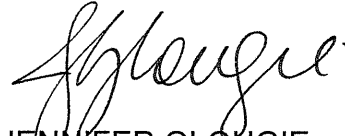
In the present case, the Employer relies on the Integration Plan and the facts set out in its written submissions to establish the nature and extent of the proposed relocation of employees. The Employer also says a "detailed plan" for employee integration is in the process of being developed, but a copy of that plan has not been provided to the Board for evaluation. I find the Employer has not established the factual particularity necessary to find the plan to relocate employees has crystallized so as to meet the test for an anticipatory order set out in *First Commercial*.

29 I find the Employer's application does not establish that, at present, the unit of PBC employees represented by CUPE and the unit of DA Townley employees represented by COPE are intermingled so as to warrant consolidating the existing units. I further find the Employer's plan to relocate employees between the existing units has not sufficiently crystallized to meet the Board's test for an anticipatory declaration set out in *First Commercial*.

V. CONCLUSION

30 For the reasons given above, the Employer's application under Section 35 for a successorship declaration is moot and its application under Sections 35(3) and (5) to consolidate the PBC and DA Townley bargaining units is dismissed.

LABOUR RELATIONS BOARD



JENNIFER GLOUGIE  
VICE-CHAIR