

BCLRB No. B179/2012

**BRITISH COLUMBIA LABOUR RELATIONS BOARD**

INSURANCE CORPORATION OF BRITISH COLUMBIA

(the "Employer")

-and-

CANADIAN OFFICE AND PROFESSIONAL EMPLOYEES  
UNION, LOCAL 378

(the "Union")

PANEL: Allison Matacheskie, Associate Chair,  
AdjudicationAPPEARANCES: Sari Wiens, for the Employer  
Allan Black, Q.C., for the Union

CASE NO.: 63747

DATE OF DECISION: September 4, 2012

## REASONS FOR THE BOARD'S DECISION

### I. NATURE OF THE APPLICATION

1 The Employer applies under Sections 135 and 72(9) for an order that the  
Essential Services Order ("ESO") governing the dispute between the parties be filed in  
the Supreme Court of British Columbia. I dismissed the application during a conference  
call earlier today. The following are the reasons for my decision.

### II. FACTS

2 On June 13, 2012, the Board issued the ESO which designates certain services  
as necessary or essential to prevent immediate and serious danger to the health, safety  
or welfare of the residents of British Columbia under Section 72 of the *Labour Relations  
Code* (the "Code"). The ESO also attaches an appendix which contains the detailed  
staffing levels designated to provide these services.

3 On July 4, 2012, the Employer filed an application alleging that an overtime ban  
resulted in essential service levels not being provided and thus was a breach of the  
ESO. The application was resolved by the agreement of the parties without the  
necessity of formal adjudication by the Board. There have been no further issues  
during the dispute concerning any overtime bans.

4 Earlier in this dispute, the Employer filed an application for an injunction in Court  
concerning the Union directing its members to modify their work e-mail signatures.

5 Earlier in this dispute, the Union issued a ban on meetings. The Employer raised  
a concern with the Union that certain services designated as essential required the  
employees to participate in these meetings. While the Employer was preparing a  
complaint to the Board concerning the Union's direction to bargaining unit members to  
refuse to participate in meetings, the Union advised the Employer that it was no longer  
maintaining the ban on meetings. The Employer therefore did not file its complaint to  
the Board.

6 In compliance with the ESO, the Union has provided notice of new strike action  
concerning certain locations for September 5, 2012. The Employer heard rumours that  
there are further locations that will be affected. The Employer made inquiries with the  
Union concerning any further locations being affected and did not receive any  
particulars from the Union. During the hearing on September 4, 2012, counsel for the  
Union advised that the Union was only taking further action at the locations where it had  
provided appropriate notice to the Employer in compliance with the ESO.

7 The Employer also relies on an alleged incident where the Union said it would  
not permit members who are not providing essential services to cross the picket line.

The Union disputes this allegation and asserts a representative of the Employer has already acknowledged that the Union did not make this statement and apologized.

### III. SUBMISSIONS

8 The Employer submits that it is necessary for the Board to order that the ESO be filed in Court to protect the public. The Employer submits that there have been a number of issues that establish that there are significant concerns regarding the Union's adherence with the ESO in providing essential service levels. The Employer acknowledges that some of the issues have been resolved but submits the process and time it required was lengthy. It submits that it is entitled to have the ESO filed in Court for enforcement purposes to ensure that the public is protected.

9 The Employer submits that there is no reason for the ESO to not be filed in Court. It says there is no expectation by either party that the ESO will be amended imminently and if it is amended, the amended ESO would be filed in Court.

10 The Employer submits that it is not an extraordinary matter to file an essential services order in Court. It acknowledges that they are not routinely filed as set out by the Board in *Sodexo MS Canada*, BCLRB No. B286/2005 ("*Sodexo*"). The Employer submits that the Board should exercise its discretion to file the ESO in Court.

11 The Union opposes the application to file the ESO in Court. It says the Union has been in complete compliance with the ESO. It says the only complaint filed with the Board regarding the Union's actions concerned the overtime ban and the complaint was resolved by an agreement between the parties over a month ago. The Union submits that the Employer's concerns regarding the ban on meetings were resolved without even requiring an application to the Board.

12 The Union submits that the Employer cannot rely on rumours of the Union picketing at locations that are not in compliance with the ESO as a basis for filing the ESO in Court.

13 The Union submits that there is no basis to file the ESO in Court. The Union submits that the Employer is engaging in bullying tactics as it is threatening the Union with contempt proceedings when there is no failure to comply with the ESO.

14 The Union submits that Section 72(9) provides the Board with the discretion not to file essential service orders in Court because they are fluid in nature and subject to change by either agreements of the parties or variations to the order by the Board. It says essential service orders are only filed in Court where there are flagrant breaches that warrant contempt proceedings against the Union. The Union says there is no labour relations purpose for filing the ESO in Court in this case and the Board should exercise its discretion to not make an order to file in Court.

15 The Union disputes the Employer's assertion that the Union has advised that it will only permit those persons who are required to provide essential services to cross

the picket line. It submits that the representative from the Employer who was part of the alleged conversation has acknowledged that the comments were not made by the Union and apologized. The Union submits that the Board should exercise its discretion to not file the ESO in Court due to the Employer's reliance on this allegation. It says this is improper conduct and the Board should refuse to make the order under Section 133(1)(b) of the Code.

16 The Union also submits that the B.C. Government and Service Employees' Union ("BCGEU") should be a party to this application as the picketing that is occurring is being done based on an agreement between the Union and BCGEU to jointly picket at common sites.

17 In reply, the Employer strongly objects to the submissions of the Union that it is engaging in bullying tactics or improper conduct. It submits that it has taken a very measured approach to the previous incidents. It acknowledges that some of them were ultimately resolved by the parties but submits that with the elevated job action, the Employer is seeking that the ESO be filed in Court so it can undertake enforcement proceedings quickly to protect the public.

18 The Employer submits that BCGEU is not a party to this application as the application is seeking an order concerning the ESO governing the Employer and the Union.

#### IV. DECISION AND ANALYSIS

19 Section 135 of the Code states:

- (1) The board must on request by any party or may on its own motion file in a Supreme Court registry at any time a copy of a decision or order made by the board under this Code or a collective agreement.
- (2) The decision or order must be filed as if it were an order of the court, and on being filed it is deemed for all purposes except appeal from it to be an order of the Supreme Court and enforceable as such.
- (3) For the purposes of this section, a designation or direction under Part 6 is deemed to be a decision or order of the board

20 Section 72(9) states:

A designation made under this section may be amended, varied or revoked and another made in its place, and despite section 135 the board may, in its discretion, on application or on its own motion, decline to file its order in a Supreme Court registry

21 I do not accept the Employer's argument that it is not an extraordinary matter for the Board to file an essential service order in Court. The Board has expressly been given the discretion to determine if it is appropriate to file an essential service order in Court. As the Board noted in *Sodexho*:

Essential service orders are not routinely filed in Court given the fluid nature of the orders. Parties are encouraged to agree to any necessary amendments to the orders to adapt to changes at the work site. The Board is also frequently involved in amending orders by request of one of the parties to the dispute. The Board may also take on a monitoring role by conducting on site investigations in order to ensure that the mandate under Section 72 is being met. (paragraph 24)

22 I therefore find that the Employer must provide reasons which persuade me to exercise my discretion to file the ESO in Court. For that purpose, the Employer relies on previous incidents and litigation to persuade me that it is appropriate to file the ESO in Court. I do not consider it appropriate for me to act upon the rumours that the Employer has heard concerning picketing occurring at locations without notice to the Employer in breach of the ESO. The rumours were not particularized to a sufficient degree. I also do not consider the previous litigation concerning the modification of e-mail signatures to be relevant to a consideration of whether the ESO should be filed in Court. As the purpose of filing the ESO in Court is to be able to commence proceedings in Court to enforce compliance, the Employer must persuade me that there is a risk of non-compliance that could not be handled expeditiously by the Board. The issues concerning the e-mails are not related to compliance with the ESO.

23 Concerning the allegation that the Union advised it would not permit members who are not performing essential services to cross the picket line, I also find that, even if true, this is not related to compliance with the ESO by the Union.

24 I therefore find that the only previous incidents relevant to the issue before me are the incidents concerning the overtime ban and the meeting ban as they both related to an allegation of non-compliance with the ESO. Both incidents were resolved without requiring formal adjudication. In both cases, the Union withdrew or ended the ban after the Employer raised its concerns.

25 It is common for there to be issues which arise concerning the implementation and compliance with an essential service order after they have been issued by the Board. This is why they are fluid in nature. They are amended or varied if an issue arises that was not contemplated or clear to both parties. When an issue arises, it does not always result in an amendment or variance to the essential service order. It may simply result in the parties reaching a clearer understanding of what was intended by the essential service order. The Board is able to deal expeditiously with these issues as they arise. The Board generally deals with these matters on an informal basis where the parties are assisted to reach agreement on the terms of the essential service order.

However, if necessary to protect the public, the Board deals with applications concerning alleged breaches of an essential service order by expedited hearings which can be conducted by conference call on short notice.

26 I am not persuaded that the previous two incidents of alleged non-compliance warrant filing the ESO in Court. I find that the parties followed the proper practice which is in keeping with labour relations purposes by resolving the issues concerning the overtime ban and the ban on meetings and see no reason for them not to be able to continue to do so.

27 I do not accept the Union's argument that the Employer is making this application as a bullying tactic to threaten the Union with contempt proceedings. I accept that the Employer is concerned about enforcement during the elevated job action and is making this application as it believes it to be necessary to be able to protect the public in the event of a breach. However, I am not persuaded that filing the ESO in Court is necessary. In the event that there is an alleged breach of the ESO that the Employer considers to be a risk of immediate and serious danger to the health, safety or welfare of the residents of British Columbia, the Employer can apply for a cease and desist order from the Board on an expedited basis.

28 For these reasons, the application is dismissed.

29 I find that it is not necessary to notify BCGEU of this application or provide them with an opportunity to make submissions as they are not a party to the ESO.

LABOUR RELATIONS BOARD



ALLISON MATACHESKIE  
ASSOCIATE CHAIR, ADJUDICATION