

**BRITISH COLUMBIA LABOUR RELATIONS BOARD**

NANAIMO SENIORS VILLAGE PARTNERSHIP (NANAIMO  
SENIORS VILLAGE MULTI-LEVEL CARE FACILITY)

(the "Partnership")

-and-

WELL-BEING SENIORS SERVICES LTD.

("Well-Being")

-and-

HOSPITAL EMPLOYEES' UNION

(the "Union")

PANEL: Brent Mullin, Chair  
Michael Fleming, Associate Chair  
Catherine R. McCreary, Vice-Chair

APPEARANCES: Delayne M. Sartison, for the Partnership  
David T. McDonald, for Well-Being

CASE NO.: 53835

DATE OF DECISION: November 10, 2005

**DECISION OF THE BOARD**

1 Well-Being and the Partnership (together the "Applicants") apply under Section 141 of the Code for leave and reconsideration of BCLRB No. B221/2005 (the "Original Decision"). The Applicants submit four grounds for leave and reconsideration:

1. the Original Panel erred in law in its interpretation and application of the "true employer" test under Bill 29. Specifically, the Original Panel erred in its approach to determining whether the Partnership "intended" to fully integrate and directly supervise and control Well-Being employees, as required by section 6(3) of Bill 29;
2. the Original Panel erred in law and acted in a manner contrary to the principles of procedural fairness and natural justice when it failed to rule on the submission that the time bar imposed pursuant to Section 33(10) of the Code prevents a finding that the Partnership could have committed any unfair labour practices in relation to any certification efforts undertaken by the employees covered by the 10-month time bar during the relevant period;
3. the Original Panel erred in law and in fact in concluding that there was an expanding organizing drive in effect at the Facility which began before July 14, 2004; and
4. the Original Panel erred in law in its interpretation of Section 2 of the Code. Specifically, the Original Panel erred in inferring that an employee's freedom to choose to be a member of a trade union overrides the Partnership's attempts to foster an economically viable business, where the same employees are currently represented by the Union.

The Applicants say that the Original Decision should be overturned and that the Union's true employer application and unfair labour practice complaints should be dismissed.

2 The requirements to obtain leave for reconsideration are set out in *Brinco Coal Mining Corporation*, BCLRB No. B74/93 (Leave for Reconsideration of BCLRB No. B6/93), (1994), 20 CLRBR (2d) 44, 93 CLLC ¶16,043. The application for reconsideration must establish a good arguable case that the original decision should be overturned, based on one of the established grounds for reconsideration. The Board's approach to the granting of leave is set forth in *RG Properties Ltd. et al.*, BCLRB No. B378/2003 (Leave for Reconsideration of BCLRB No. B252/2003).

3 We find as follows in regard to the respective grounds for leave and reconsideration:

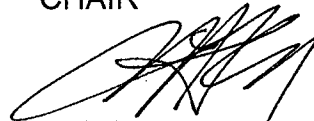
1. The Applicants' focus on "intended" in Section 6(3) of the *Health and Social Services Delivery Improvement Act*, RSBC 2002, c. 2 ("Bill 29") is not misplaced. However, even thus accepting for purposes of this decision that s. 6(3) requires that focus on subjective as well as objective evidence of intent, the argument that the s. 6(3) test for true employer is not met because the Partnership's subjective intent is belied by the undisputed facts of the case: see in particular paragraphs 23-25 and 108-120 of the Original Decision.
2. The Original Panel did not fail to rule on the above-described submission; she correctly concluded that the time bar in Section 33(10) of the Code does not suspend, or insulate an employer from, the unfair labour practice provisions in the Code.
3. The conclusion of mixed fact and law in paragraph 139 of the Original Decision, is not inconsistent with principles expressed or implied in the Code, and we find no error of law or policy in that analysis. Further, we are not persuaded that there is a proper basis in this case to interfere with the Original Panel's findings of fact: see *Roberts Roofing and Sheet Metal Ltd.*, BCLRB No. B313/94 (Leave for Reconsideration of BCLRB No. B369/93).
4. The conclusion in paragraph 145 of the Original Decision that "...on the facts in this case, the Partnership's ability to save costs by contracting out does not override the Code's protection of an employee's freedom to choose to be a member of a trade union" is not inconsistent with the principles expressed or implied in the Code. The fact that the same group of employees is currently represented by the Union (albeit with a different employer) does not mean that this conclusion is wrong in law or policy.

4 In light of the above, the application for reconsideration is dismissed.

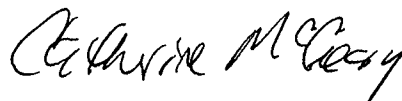
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