

BCLRB No. B224/2010

BRITISH COLUMBIA LABOUR RELATIONS BOARD

SKY-HI SCAFFOLDING LTD.

(the "Employer")

-and-

**CONSTRUCTION, MAINTENANCE AND ALLIED
WORKERS BARGAINING COUNCIL**

("CMAW").

-and-

BRITISH COLUMBIA REGIONAL COUNCIL OF CARPENTERS

(the "BCRCC")

PANEL: Allison Matacheskie, Vice-Chair and Registrar

APPEARANCES: Leah Terai, for CMAW
Arnold P. Berry, for the BCRCC

CASE NO.: 61447

DATE OF DECISION: December 20, 2010

DECISION OF THE BOARD

I. NATURE OF THE APPLICATION

1 CMAW applies under Section 51 of the Code requesting a copy of the current
collective agreement between the Employer and the BCRCC be filed with the Board and
that a copy be provided to CMAW.

2 The BCRCC was certified for a unit employed by the Employer on March 31,
2010. CMAW was the previous bargaining agent for the unit. CMAW says the
collective agreement between these parties is not listed on the Board's website and
they allege the collective agreement has not been filed with the Board in accordance
with Section 51 of the Code.

3 The BCRCC submits that CMAW's application ought to be dismissed because
the collective agreement has been filed by the Board and is available on the Board's
website. In the alternative, the BCRCC says the order sought by CMAW should not be
made because CMAW has not established that a valid labour relations purpose will be
served by making the order.

4 The Employer takes no position on this application and did not file a submission.

II. POSITIONS OF THE PARTIES

5 CMAW says the BCRCC and the Employer have entered into a letter of
understanding to modify certain terms and conditions of the collective agreement,
although it is not clear whether this is the CMAW Agreement or the BCRCC Industrial
Agreement. It says, pursuant to Section 51 of the Code, BCRCC is required to file a
copy of the collective agreement with the Board.

6 Further, CMAW says the BCRCC is engaged in a campaign to raid bargaining
units represented by CMAW. November and December are the seventh and eighth
months of the term of many of CMAW's collective agreements.

7 As part of its campaign, CMAW says the BCRCC has issued a leaflet targeting
scaffolders and makes a number of assertions concerning its collective agreement
benefits. As well, the BCRCC draws a comparison between its wage rate and those
contained in CMAW's collective agreements. CMAW says it has no corresponding
information regarding the BCRCC collective agreements or terms and conditions by
which to address the assertions made by the BCRCC. CMAW says this amounts to a
labour relations purpose for seeking access to the BCRCC's agreement with the
Employer.

8 The BCRCC says when it acquired the bargaining rights, CMAW's Standard Industrial and Standard Commercial/Institutional Collective Agreements ("Collective Agreements") for the term May 1, 2004 to April 30, 2010 were in force. After the BCRCC was granted its certification, those Collective Agreements remained in force in accordance with Section 27(1)(c) of the Code.

9 The BCRCC says on April 26, 2010, the Employer and the BCRCC agreed to modify certain terms of the Collective Agreements. They did not renegotiate or renew the entire Collective Agreements.

10 Because the Collective Agreements inherited by the BCRCC were filed with the Board and remain available through the Board's website, the BCRCC says it is complying with the Section 51 requirement. BCRCC says the requirement to file a copy of a collective agreement within 30 days of its execution relates only to first collective agreements or renewal collective agreements negotiated at the conclusion of a collective agreement's term. It argues Section 51 does not impose an obligation to file or particularize mid-term changes or modifications arrived at by consent. To interpret Section 51 otherwise, would create an undue burden for members of the labour relations community, would further strain the Board's resources, and would not advance the purposes of the Code.

11 The BCRCC also says that CMAW must identify a valid labour relations purpose for the Board to make the order sought by CMAW. The BCRCC says that the Board should not be influenced by CMAW's claim that it has a labour relations purpose for bringing an application under Section 51 of the Code. The BCRCC says that CMAW is equipped to respond to assertions made by the BCRCC - there have been numerous representation contests involving these parties and CMAW has not previously found it necessary to seek the Board's intervention in order to defend itself. Citing *Gibraltar Mines Ltd.*, BCLRB No. 16/75, the BCRCC says the Board should play a limited role in policing or regulating representation campaigns - the parties are capable of conveying their messages without the Board's assistance and ought to be left to their own devices.

12 III. ANALYSIS AND DECISION

Section 51 of the Code states:

51 Each of the parties to a collective agreement must, within 30 days after its execution, file a copy of it with the board.

13 The Board's practice is to make all collective agreements filed with the Board accessible to the public in electronic form through the Board's website: *Nanaimo Forest Products (Harmac Pacific)*, BCLRB No. B193/2010 ("*Nanaimo Forest Products*") (para. 5).

14 While the Board has not historically sought out parties who do not comply with the terms of Section 51, in this case, as in *Nanaimo Forest Products*, there is a direct request for a collective agreement, which Section 51 expressly requires be filed with the Board.

15 The language in Section 51 is mandatory. In *Construction Labour Relations Association of British Columbia*, BCLRB No. B141/2005, the Board stated:

Section 51 provides a statutory recognition of the public interest in the facilitation and encouragement of informed decision making in collective bargaining and provides a statutory mechanism to achieve those ends by providing, as a minimum measure, a requirement that parties to collective agreements file these agreements with the Board. (para. 45)

16 I am not persuaded, as argued by the BCRCC, that because the terms and conditions are reflected in a letter of understanding rather than a renewal collective agreement, it need not file the letter of understanding with the Board. A letter of understanding modifying terms of a collective agreement falls within the definition of "collective agreement" as defined in Section 1 of the Code: see, for example, *University College of the Cariboo and Canadian Union of Public Employees, Local 900*, [1996] B.C.C.A.A. No. 357 at para. 63, *Action Construction & Surveying Services Ltd.*, BCLRB No. 172/84 (Reconsideration of L47/83) at p. 12 and *MacDonalds Consolidated Ltd.*, BCLRB No. 51/76, [1976] 2 CLRBR 292 at 297.

17 Further, the language in Section 51 is clearly mandatory. I therefore find that there is no need to identify a specific labour relations purpose for filing a collective agreement within 30 days of its execution. However, in the event that the letter of understanding is a mid-term change and there is a requirement for a labour relations purpose to trigger an obligation to file mid-term changes, I find CMAW has identified a valid labour relations purpose for access to the Collective Agreements and letter of understanding. It has an interest in knowing the terms and conditions contained in the letter of understanding, in order to address the assertions made by the BCRCC with respect to its collective agreements in the context of a campaign to raid CMAW bargaining units.

18 In the circumstances, the Collective Agreements and any letters of understanding that have been entered into between the BCRCC and the Employer are to be filed with the Board forthwith and no later than three calendar days from the date of this decision. The Board's address for electronic filing is lrb.library@lrb.bc.ca.

LABOUR RELATIONS BOARD



ALLISON MATACHESKIE
VICE-CHAIR AND REGISTRAR

**BRITISH COLUMBIA
LABOUR RELATIONS BOARD**

MULTIPLE FAX TRANSMITTAL SHEET

Re: British Columbia Regional Council of Carpenters -and-
Construction, Maintenance and Allied Workers Bargaining
Council (Sky-Hi Scaffolding Ltd.)
(Section 51 - Case No. 61447/10)

DATE: December 20, 2010

SENDER: LABOUR RELATIONS BOARD

OPERATOR SENDING: Dylen Dennis, Acting Senior Executive Assistant to
Allison Matacheskie, Vice-Chair and Registrar

TELEPHONE NO: (604) 660-1311

INTENDED RECEIVER:

FAX NUMBER:

Sky-Hi Scaffolding Ltd.

604-299-3117

Harris & Company

ATTENTION: Barry Dong

604-684-6632

Construction, Maintenance and
Allied Workers Bargaining Council

ATTENTION: Jan Noster

604-437-3128

Laughton & Company

ATTENTION: Leah Terai

604-683-6622

British Columbia Regional Council of Carpenters

ATTENTION: Greg Sewell/Wayne Cox

604-524-6984

Arnold P. Berry

ATTENTION: Arnold P. Berry

250-629-3501

NUMBER OF PAGES: 7 (including this page)

SPECIAL INSTRUCTIONS:

Decision BCLRB No. B224/2010 dated December 20, 2010 enclosed.
Hard copies will be sent to all interested parties.

**BRITISH COLUMBIA
LABOUR RELATIONS BOARD**

December 20, 2010

To Interested Parties

Dear Sirs/Mesdames:

Re: British Columbia Regional Council of Carpenters -and- Construction,
Maintenance and Allied Workers Bargaining Council (Sky-Hi
Scaffolding Ltd.)
(Section 51 - Case No. 61447/10)

Enclosed is a copy of the Board's decision (BCLRB No. B224/2010) rendered in connection with the above-noted matter.

Yours truly,

LABOUR RELATIONS BOARD



Dylen Dennis, Acting Senior Executive Assistant to
Allison Matacheskie, Vice-Chair and Registrar

Interested Parties:

Sky-Hi Scaffolding Ltd.
3195 Production Way
Burnaby BC
V5A 3H2

Harris & Company
Barristers & Solicitors
Suite 1400, Bentall 5
Vancouver BC V6C 2B5
ATTENTION: Barry Dong

Construction, Maintenance and Allied Workers
Bargaining Council
304 - 2806 Kingsway
Vancouver BC
V5R 5T5
ATTENTION: Jan Noster

Laughton & Company
Barristers and Solicitors
Suite 1090 - 1090 West Georgia Street
Vancouver BC
V6E 3V7
ATTENTION: Leah Terai

- 2 -

Case No. 61447December 20, 2010

British Columbia Regional Council of Carpenters
105 - 1628 Fosters Way
Delta BC
V3M 6S6
ATTENTION: Greg Sewell/Wayne Cox

Arnold P. Berry
Lawyer
1362 Mackinnon Road
RR1
Pender Island BC
V0N 2M1
ATTENTION: Arnold P. Berry