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LABOUR RELATIONS BOARD

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MULTIPLE FAX TRANSMITTAL

Date: June 28, 2002
Time: 2:10pm
Pages: 16 (including the cover page)

From: Tammy, for V.A. Pylypchuk
Vice-Chair

RE: Health Employers Association of British Columbia (The Six New Authorities) -and-
Nurses' Bargaining Association
(Section 35 - Case No. 47340)

Health Employers Association of British Columbia (The Six New Authorities) -and-
Paramedical Professional Bargaining Association
(Sections 35, 139 and 142 - Case No. 47386)

Health Employers Association of British Columbia (The Six New Authorities) -and-
Hospital Employees' Union
(Sections 35, 139 and 142 Case No. 47389)

To:	Ogilvy Renault	*Fax No:*	604-806-0933
Attention:	Delayne Sartison/Tom Roper/Julie Nichols		
To:	Victory Square Law Office	*Fax No:*	604-684-8427
Attention:	John A. Hodgins	*Fax No:*	604-681-5436
To:	David P. Reynolds	*Fax No:*	604-739-1510
To:	HEU		
Attention:	Jim Quail/Carmela Allevato	*Fax No:*	604-291-7514
To:	Health Services & Support-Community Bargaining Association c/o BCGEU		
Attention:	Ken Curry/Rob Wotherspoon		

Board Decision BCLRB No. B232/2002 enclosed. Please deliver immediately.

HOSPITAL EMPLOYEES' UNION
JUN 28 2002
PROV. OFFICE
ORIGINAL

PLEASE NOTE: Hard copy will be mailed

BRITISH COLUMBIA

LABOUR RELATIONS BOARD

June 28, 2002

To Interested Parties

Dear Sirs/Mesdames:

Re: Health Employers Association of British Columbia (The Six New Authorities) -and- Nurses' Bargaining Association
(Section 35 - Case No. 47340)

Health Employers Association of British Columbia (The Six New Authorities) -and- Paramedical Professional Bargaining Association
(Sections 35, 139 and 142 - Case No. 47386)

Health Employers Association of British Columbia (The Six New Authorities) -and- Hospital Employees' Union
(Sections 35, 139 and 142 - Case No. 47389)

Enclosed is a copy of the Board's decision (BCLRB No. B232/2002) rendered in connection with the above-noted matters.

Yours truly,

LABOUR RELATIONS BOARD

Tammy Nystrom

Tammy Nystrom
Executive Assistant to
V.A. Pylypchuk
Vice-Chair

Enclosure(s)
VAP/tn

Interested Parties:

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ATTENTION: Peggy Dyke

Interested Parties:

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c/o Hospital Employees' Union
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ATTENTION: Chris Allnutt/Jim Quail

Health Services & Support-Community Bargaining Association
c/o B. C.Government and Service Employees' Union
4911 Canada Way
Burnaby BC V5G 3W3
ATTENTION: Ken Curry/Rob Wotherspoon

cc: Residents Bargaining Association
c/o Professional Association of Residents
900 - 601 West Broadway
Vancouver BC V5Z 4C2
ATTENTION: Zoe Towle

BCLRB No. B232/2002

BRITISH COLUMBIA LABOUR RELATIONS BOARD

HEALTH EMPLOYERS ASSOCIATION OF BRITISH COLUMBIA

("HEABC")

-and-

NURSES' BARGAINING ASSOCIATION

("NBA")

-and-

PARAMEDICAL PROFESSIONALS BARGAINING ASSOCIATION

("PPBA")

-and-

HEALTH SERVICES & SUPPORT – FACILITIES SUBSECTOR BARGAINING ASSOCIATION

("FSBA")

(together, "the Associations")

-and

BRITISH COLUMBIA NURSES' UNION

("BCNU")

-and-

HOSPITAL EMPLOYEES' UNION

("HEU")

-and-

HEALTH SCIENCES ASSOCIATION OF BRITISH COLUMBIA

("HSA")

-and-

B.C. GOVERNMENT AND SERVICE EMPLOYEES' UNION

("BCGEU")

PANEL:	Laura Parkinson, Vice-Chair V.A. Pylypchuk, Vice-Chair Ken Saunders, Vice-Chair
APPEARANCES:	Thomas A. Roper, Q.C., Delayne M. Sartison and Julie Nichols, for HEABC David Reynolds, Jeanne Meyers and Ritu Mahill, for PPBA and HSA Carmela Allevato and Jim Quail, for FSBA and HEU John Hodgins and Deborah Charrois, for NBA and BCNU Rob Wotherspoon and Ken Curry, for BCGEU
CASE NOS.:	47340, 47386 and 47389
DATES OF HEARING:	June 17, 18, 19, 20 and 21, 2002
DATE OF DECISION:	June 28, 2002

DECISION OF THE BOARD

I. NATURE OF APPLICATIONS

1 The Associations apply to the Board pursuant to Sections 35 and 142 of the *Labour Relations Code* (the "Code") for a declaration that a successorship has occurred from the former Regional Health Boards and Community Health Councils to six new Health Authorities. The Associations ask the Board to vary their consolidated certifications to reflect the successorship. The Associations also ask the Board to exercise its discretion under Section 35(5) of the Code to dovetail seniority of employees employed by the Health Authorities on a Health Authority-wide basis.

2 HEABC concedes that a successorship has occurred and does not oppose the amendment of the consolidated certifications to reflect that the six new Health Authorities are the juridical employers of the employees previously employed by the Regional Health Boards and Community Health Councils. However, HEABC says that the form of the consolidated certifications which show various facilities, agencies, centres, programs, organizations, or locations, as the case may be, as a separate entry in the consolidated certification must be maintained. HEABC says the parties and the Board have always recognized that each entry on the certification reflects what the parties and the Board have deemed to be a separate employer for collective agreement purposes (the "Collective Agreement Employers"). HEABC says that the parties' collective agreement relationship, including many benefits such as seniority, is founded on Collective Agreement Employers being the employer of the employees bound by the collective agreements.

3 It is for that and other reasons that HEABC also opposes the Board exercising its discretion to dovetail seniority lists. HEABC says the seniority lists are tied to and limited by the Collective Agreement Employers. HEABC says that what the Associations really seek is for the Board to amend the collective agreements to give them a right which they were unable to obtain in collective bargaining.

4 Finally, HEABC argues that the Associations' applications amount to a collateral attack on the *Health and Social Services Delivery Improvement Act,* Bill 29, S.B.C. 2002, c. 2. ("Bill 29"). HEABC says that the unfairness and mischief which the Associations want the Board to address arise from Bill 29 and not from the successorship. Therefore, says HEABC, the Board has no jurisdiction in this case to exercise its remedial discretion under Section 35(5) of the Code.

II. BACKGROUND

5 In 1991 the British Columbia Royal Commission on Health Care and Costs entitled "Closer to Home" was issued (the "Seaton Commission"). The Seaton Commission recommended a reorganization of health care delivery as well as making some suggestions for streamlining labour relations in the health industry. These

recommendations in part led to the creation of the Korbin Commission and the resultant enactment of the *Public Sector Employers Act*, R.S.B.C. 1996, c. 384, under which HEABC was created. This was followed by a government policy document entitled "New Directions for a Healthy British Columbia". The New Directions document led to the passing of the *Health Authorities Act*, R.S.B.C. 1996 c. 180, and the establishment of the Dorsey Commission to review labour relations and collective bargaining structures in the health sector. All of this activity culminated in the creation of 52 Regional Health Boards and Community Health Councils; it also resulted in the creation of 5 statutorily mandated bargaining units that were multi-employer and sector wide in scope.

6 PPBA submits that all of this activity was a move to decentralize control away from the Government and the Ministry of Health. HEABC contends that it was nothing more than the first step in the centralization of authority by bringing facilities, programs, etc. under the control of Regional Health Boards and Community Health Councils. Although this is not a debate we need to resolve, we observe that the move from individual facilities, etc. to regional and community governance did have an element of centralization to it; but, by the same token, the divestiture of decision making to the regional and community level from the Ministry of Health also embodied an element of decentralization. That was, as PPBA points out, the state of affairs until December 2001 when the Government introduced legislation collapsing the 52 Regional Health Boards and Community Health Councils into the six new Health Authorities. The six new Health Authorities consist of 5 geographically defined Health Authorities and one Provincial Health Authority responsible for certain specialized health care services. It is this transition that has resulted in a myriad of applications being brought before the Board, including the present one.

III. ANALYSIS AND DECISION

7 This case was heard over 5 days and produced some 20 volumes of documents, 5 volumes of statutory and case authorities and well over 100 pages of notes, memoranda of argument and oral testimony. We could not have heard the case on such a tight time frame without the cooperation of the parties for which the Board is grateful.

8 At the heart of this case is the issue of seniority. The Associations complain that the limitations imposed on bumping by Bill 29 when combined with HEABC's insistence that seniority continue to be determined based on Collective Agreement Employers have unduly prejudiced the ability of senior employees to protect themselves from layoff. The Associations also complain that limiting seniority to Collective Agreement Employers has given the Health Authorities an unprecedented opportunity to selectively cut their workforces without regard to seniority and to keep only those employees they favour while laying off others.

9 We observe that while seniority is not a statutory right, it is nonetheless one of the most important, if not the most important, right that the trade union movement has been able to win for its members in its modern day history. The importance of seniority

and the concerns that a threat to seniority unleashes cannot be overstated. The importance of seniority has been repeatedly noted by this Board in its jurisprudence: *Group of Seagrams Employees,* BCLRB No. 85/77, [1978] 1 Can LRBR 375; *Kelly Douglas and Company Limited,* BCLRB No. 8/74, [1974] 1 Can LRBR 77 (*"Kelly Douglas"*); *Granville Island Brewing Company Ltd.,* BCLRB No. B418/95 (*"Granville Island Brewing"*). It is therefore no surprise that the Associations have come to the Board seeking redress in these circumstances.

10 The problems which arise on a successorship, particularly as they affect seniority, were eloquently discussed by Chair Weiler in *Kelly Douglas.* Indeed, it was the inability of the Board to remedy the unfairness that may result when employees of two businesses intermingle on a merger that led the Legislature to enact provisions in the Code empowering the Board with the discretion to modify or restrict the operation or effect of a provision of a collective agreement to define seniority rights of employees affected by the successorship: Section 35(5) of the Code. It is because seniority is so important that most, if not all, jurisdictions have similar provisions in their labour relations statutes.

11 We have considered all of the parties' arguments and submissions but will only focus on those aspects critical to this decision as we promised the parties an expedited decision. We will address: (a) the successorship; (b) Bill 29 and its impact; (c) the status of the Health Authorities as employers; and (d) the appropriateness of the exercise of our discretion in the circumstances. However, these matters may not be addressed as discretely as we have identified them because they are interrelated.

A. Successorship

12 While we recognize that successorship is conceded in this case, we are compelled nonetheless to address it because of HEABC's arguments that the remedies sought by the Associations are aimed at redressing the effects of Bill 29 and not the successorship. HEABC urges the Board to view the successorship and the passage of Bill 29 as discrete and independent of one another. We reject that approach. HEABC's position is an invitation for the Board to treat this successorship as it would any in the private sector, and to treat the effects of Bill 29 as an intervening independent act of the Legislature. This is an invitation to focus on form, not substance. What HEABC's position avoids is the fundamental fact that health care delivery is a publicly funded public sector institution and that the successorship itself was the product of a legislative act. There is no direct parallel between how this successorship occurred and the way successorship normally occurs in the private sector.

13 In applying Section 35 of the Code the Board must appreciate the contextual framework within which the successorship takes place -- in this case it is in substance one of a large public sector institution driven by a legislative act. There was no share purchase, asset purchase, or business purchase. There was no buyer and seller in the classic sense that led to the business being reorganized by the purchaser integrating the vendor's assets, employees, debts and liabilities into its own operations. All there

was was an act of the Legislature which mandated the demise of the predecessor employers, Regional Health Boards and Community Health Councils, and replaced them with the new Health Authorities. This was followed by a second act of the Legislature, Bill 29, which enabled the new Health Authorities to reorganize the inherited business, including an ability to move services and employees and to limit their bumping rights under the collective agreements. All of this, both the successorship and the subsequent powers, could have been done in one act of the Legislature. The fact that it was done in two acts of the Legislature is a matter of form, not substance. While the methodology of achieving the successorship has no direct parallel, the ultimate effect on the members of the affected bargaining units represented by the Associations is in substance not much different from the effect of a private sector purchaser integrating and reorganizing the predecessor vendor's business after an acquisition. This Board has always looked through the form of a transaction to address its substance from a labour relations perspective and that is what we do now in this case. HEABC's argument that the effects of Bill 29 are discrete and unconnected to the successorship, thus depriving the Board of jurisdiction under Section 35, is therefore rejected.

14 HEABC argues that what has happened now is no different then what took place several years ago when the Regional Health Boards and Community Health Councils were created. HEABC says that many if not all of the same objectives, responsibilities and accountabilities as are being borne by the Health Authorities had been borne by the Regional Health Boards and Community Health Councils. HEABC argues that the Associations did not apply for remedies under Section 35(5) of the Code when the Regional Health Boards and Community Health Councils were formed, and because nothing of substance has changed, the Board should not exercise its discretion now.

15 We have reviewed the myriad of documents supplied to us in this hearing. HEABC is correct to some extent that on a lesser and more decentralized scale the same objectives, responsibilities and accountabilities were imposed by the Government on the previous Regional Health Boards and Community Health Councils. HEABC is also correct that the Associations did not come to the Board seeking consequential remedial relief under Section 35 of the Code when the Regional Health Boards and Community Health Councils were created. However, there is good reason why they did not come to the Board. At the time the Regional Health Boards and Community Health Councils were setting about their business of reorganizing the delivery of health care services, they also engaged in an extensive negotiating process with the Associations under the auspices of an Industrial Inquiry Commissioner, Vince Ready, which resulted in the Employment Security and Labour Adjustment Agreement ("ESLA") and a bi-lateral agency, the Healthcare Labour Adjustment Agency ("HLAA") to administer it. This resolution effectively ameliorated the impact that any reorganization of health care service delivery would have on the employees of the affected bargaining units. The terms of ESLA were incorporated into the collective agreements. As a result, there was no need for the consequential remedies under Section 35(5) of the Code. The parties had done what the Board actually prefers them to do - settle their own differences: See *Granville Island Brewing, supra.*

16 In this respect the circumstances of the present case are markedly different. We agree with the Associations that their ability to settle matters the previous time should not prejudice their right to seek remedies before the Board on this occasion. This brings us to a discussion of the impact of Bill 29.

B. Bill 29

17 We have reviewed Bill 29 and conclude that the Legislature intended through this enactment to enable the Health Authorities to redesign and reorganize health care service delivery. The Bill gives Health Authorities the right to reorganize and move functions and services within a worksite, to other worksites or to other health sector employers: Section 4. The Health Authorities were also given the right to assign employees to work at other worksites or for other heath sector employers: Section 5. Bill 29 also enables Health Authorities to contract out non-clinical services.

18 To achieve these objectives, Bill 29 removed any restrictions contained in the collective agreements on contracting out that may affect the contracting out of non-clinical services. It precludes the Board from declaring contractors providing non-clinical services on a contract basis to be successor employers. It also precludes the operation of Section 38, the common employer provision, of the Code. Bill 29 limits the ability of the Board to declare employees of the contractor to be employees of the health sector employer unless the employee is fully integrated into the health sector employer's operations and is under its direct control: Section 6(3).

19 To facilitate the movement of services and employees Bill 29 also eliminates ESLA and the HLAA: Sections 7 and 8. It removes collective agreement barriers to layoffs and limits bumping to a process detailed in the accompanying regulation: Section 9 of Bill 29; Section 5 of the Health Sector Labour Adjustment Regulation (the "Regulation"). Section 5 of the Regulation limits the use of seniority so that an employee who has been given a layoff notice can only target certain classes of junior employees for displacement and limits the number of bumps to two within a 60-day window before a layoff can occur. Notice of bumping must be given by the employee within a very short prescribed time frame. Section 5 reads:

> 5 (1) An employee exercising a right to bump another employee under Section 9(d) of the Act must
>
> (a) advise the employee's health sector employer within 48 hours after receiving the seniority list referred to in subsection (2) of his or her intention to bump an employee at the same worksite, or
>
> (b) advise the employee's health sector employer within 7 days after receiving the seniority list referred to in subsection (2) of his or her intention to bump an employee at a different worksite.

(2) An employee who has received a layoff notice must decide whether to bump another employee, within the time set out in subsection (1), after receiving from the employee's health sector employer a list of the positions on the same seniority list occupied by employees with fewer than 5 years seniority.

(3) An employee with greater than 5 years seniority making a decision under subsection (2) may bump an employee with fewer than 5 years seniority who occupies a position in a classification that entails performing duties the bumping employee is qualified to perform and capable of performing.

(4) An employee with fewer than 5 years seniority making a decision under subsection (2) may bump the most junior employee whose hours of work are comparable and who occupies a position in a classification that entails performing duties the bumping employee is qualified to perform and capable of performing.

(5) If an employee exercises a right to bump another employee under subsection (3) or (4), the health sector employer may assign the employee to the new position anytime within 7 days from the date on which the health sector employer receives notification that the employee has exercised his or her right to bump that other employee.

(6) An employee who fails to exercise his or her right to bump another employee under this section may be laid off anytime after 7 days from the date on which the employee received the seniority list referred to in subsection (2) or at the expiry of the employee's notice period, whichever is later.

20 Section 9(c) of Bill 29 limits the notice of layoff to a maximum of 60 days. Section 3 of Bill 29 defines bumping as "the exercise of a right of one employee to displace another employee who is on the same seniority list under a collective agreement."

21 However, Bill 29 limits or restricts only certain specified collective agreement rights. For example, Bill 29 does not define "seniority" or a "seniority list". We also conclude that Bill 29 does not limit the Board's powers under Section 35(5) to make adjustments to the seniority lists. The Legislature clearly considered the impact of Section 35 in the circumstances of enabling the Health Authorities to reorganize health care delivery because it precluded the Board from declaring contractors who provide non-clinical services to be successor employers. Had the Legislature intended to further limit the Board's powers under Section 35, it could have done so but it did not. In fact, in Section 17 the impact of the Code and the jurisdiction of the Board were preserved except to the extent where there is a conflict or inconsistency between the Code and Bill 29.

C. Health Sector Employer

22 HEABC argues that the form of the seniority lists as they existed on the date Bill 29 was proclaimed governs the application of the bumping. HEABC argues that the applicable seniority lists are effectively defined. It says that the seniority lists under the collective agreements are tied to the definition and scope of the Collective Agreement Employers and are confined on that basis. Finally, HEABC argues that the "health sector employer" as defined under Bill 29 means the Collective Agreement Employer and not the juridical employer - the Health Authorities. HEABC says the Board's certification processes of identifying sites, facilities or locations as employers confirm this approach. As a consequence HEABC argues that any determination by the Board which alters the seniority lists would effectively amount to rewriting Bill 29 and create an inconsistency between the Code and Bill 29.

23 We are not persuaded by HEABC's arguments. *Central Vancouver Island Health Region*, BCLRB No. B29/2002 ("*CVIHR*") settled the issue when the Board in that case held that the juridical employer (i.e. the Health Authorities) is the employer for the purposes of the Code. The Board in *CVIHR* also said that the parties are free for collective agreement purposes to define employer in other ways. However, that has no impact on what entity the Board will view as the employer for purposes of the Code or the Board's certification process. The administrative process adopted by the Board for processing certifications in the health sector is descriptive in nature. Each entry on the consolidated certification reflects the "building block" origin of the group of employees that are being added to the consolidated certification. Nothing of substance turns on that administrative shorthand. It is a convenient way of describing the scope of the group being added so that determinations of appropriateness and support can be made. It also assists in tracking situations where the juridical employer operates in both the union and non-union environment. The fact that the parties for their own collective bargaining process decided to define "employer" for collective agreement purposes as equivalent to an entry on the consolidated certification does not cloak that entry with any juridical status.

24 HEABC also argues that grievances have always been filed against the Collective Agreement Employers and arbitrations have been upheld on that basis by the Board. We find that the form of the grievance is not determinative of legal liability. The juridical employer in all cases would be liable for the outcome of the grievance notwithstanding how the employer entity was described in the style of cause.

25 We conclude that for the purposes of Bill 29, "health sector employer" is the juridical employer - the Health Authority. It is the Health Authorities that are redesigning health care service delivery not the Collective Agreement Employers. It is the Health Authorities that determine the movement of services and of employees, not the Collective Agreement Employers. It is the Health Authorities that have the legal capacity to contract out non-clinical services. We note in the documents examples of a Health Authority issuing a request for a proposal ("RFP") for laundry services and

another example of a RFP being issued for landscaping services. In each case, the RFP covers services required by numerous Collective Agreement Employers without drawing any distinction between them.

26 Collective Agreement Employers are a construct, a convenient form of managing collective agreements and sector-wide bargaining units in a large industry. However, the juridical employer of which they are a part is the entity bound by the collective agreement. The only impact the Collective Agreement Employer definition has on the juridical employer is that it limits the administration of the collective agreement, and certain benefits and rights under the collective agreement, to discrete units defined as the Collective Agreement Employer. It is no different than if a private sector employer committed to administering parts of its collective agreement on a departmental basis.

27 Our conclusion does not mean that we are substituting the juridical employer for the Collective Agreement Employer in each of the collective agreements. The construct of a Collective Agreement Employer remains as far as it may be applicable except to the extent that it is inconsistent with Bill 29 or the exercise of our discretion under Section 35(5).

28 While the form of the seniority lists is currently tied to the Collective Agreement Employer definition, that definition does not limit our discretion under Section 35(5) of the Code to make adjustments such as dovetailing of seniority where a major reorganization of the business works an unfairness on the employees' seniority, and consequently, their job security. The Board was given the jurisdiction under Section 35(5) to fashion appropriate and equitable solutions and we find nothing in Bill 29 that affects that specific power. Given the importance of seniority to employees and given that the Legislature turned its mind to seniority when it placed limits on its exercise in the case of bumping, had the Legislature intended to completely curtail the Board's jurisdiction under Section 35(5) to deal with seniority, it could have done so expressly. The Legislature must be taken to have been aware of the Board's jurisdiction and authority to make adjustments to seniority on a successorship when it passed Bill 29. Therefore, there is nothing in the passage of Bill 29 that by necessary implication requires us to conclude that the form of seniority existing on the date Bill 29 was proclaimed becomes forever tied to the seniority defined by the scope of the Collective Agreement Employers.

D. Exercise of our Discretion

29 We have concluded that the circumstances of this case warrant the exercise of the Board's discretion for the following reasons. The purpose of Section 35(5) and the Board's jurisdiction over the issue of seniority is an equitable one. It is rooted in the need to ensure fairness and balance when organizations come together resulting in an impact on employees and potential job loss. Under the Regional Health Board and Community Health Council structure, ESLA and the HLAA were in place to ensure that job loss was ameliorated. Those safeguards are now gone. The Health Authorities are now tasked with the responsibility for managing their own human resources. On an ad

hoc basis the Health Authorities are prepared to extend seniority rights to some employees who apply for and obtain positions at other Collective Agreement Employer locations. We agree with the Associations that this reflects a selective retention of members of the workforce. HEABC conceded that its ability to engage in selective conduct flows as a by-product of Bill 29. Nothing in our reading of Bill 29 discloses a legislative intent to permit the Health Authorities to selectively eliminate employees from their workforces without regard to seniority. Nothing in Bill 29 shows a legislative intent to eliminate seniority or its use to the point taken by HEABC and the Health Authorities.

30 The Associations have asked the Board to dovetail seniority on a Health Authority wide basis. This may make some sense in populated areas. For example, a number of Collective Agreement Employers that were under the umbrella of different Regional Health Boards are now subsumed under the Vancouver Coastal Health Authority. Richmond, Vancouver and the North Shore all fall within that scope. Yet, a person living in Richmond working at Vancouver General Hospital could not bump into a position at the Richmond General Hospital if seniority was maintained on a Collective Agreement Employer basis. As a result, employees with years of seniority may find themselves laid off while a junior employee continues to work. The same can occur within the jurisdiction of the Fraser Health Authority and the Interior Health Authority.

31 There are of course practical limitations to the exercise of seniority on a basis broader than the Collective Agreement Employer. Under Bill 29, the Health Authority has the right to assign the person to the bumped position within 7 days of the bump having taken place. It is unlikely that in a vast Health Authority such as the Northern Health Authority or the Interior Health Authority an employee could actually report for work within that narrow window and that may as a practical matter limit an employee's ability to exercise seniority beyond a reasonable range.

32 We note that the Board's policy on the integration of seniority lists generally favours dovetailing. In some cases endtailing is the result. However, these are not the only available options. Nor is the choice in this case necessarily confined to Collective Agreement Employer's seniority versus Health Authority wide seniority. We note that in the Air Canada - Canadian Airline merger a creative solution embodying features to fit the circumstances extant in that industry and the expectations of its employees was devised. Several arbitrators addressed the seniority merger issues affecting different parts of the workforce. A variable ratio model was adopted for pilots; customer service representatives and technical workers were dovetailed; and a relative position model was adopted for cabin personnel.

33 In the present circumstances, if a seniority list can be constructed based on a Collective Agreement Employer or on a Health Authority basis, then it can also be constructed on something in between. The only mention of seniority in Bill 29 is that the person bumping must choose a position on the same list as that person's name appears. Nothing in Bill 29 says what that list must be, what its scope must be or how it is to be constructed. Nothing prevents the Health Authorities and the Associations from agreeing to different lists for different purposes, for different bargaining units, for different classifications or for different geographic areas. To say that seniority problems

and their corresponding solutions may be complex is to understate the obvious as was recently illustrated by the Air Canada - Canadian Airlines acquisition. There may not be a one-size-fits-all solution in each case.

34 We find the result we have reached not to be in conflict or inconsistent with Bill 29. It must be remembered that the policy to remedy inequities in seniority amongst employees arising from business reorganizations on successorship is as much a policy of the legislature as are the limitations imposed under Bill 29. Nothing in the adjustment of seniority lists affects those limitations. The time frames for exercising bumping rights specified in the Regulation remain in place; the number of bumps that can occur remains limited; the limitation on seniority relating to targeting an employee for displacement remains; and no obstruction to layoff is created. Appropriate adjustments to seniority lists simply create a fairer environment in which these limitations operate.

35 Nor is this result giving the Associations something which they could not achieve through collective bargaining. At the time the parties were in collective bargaining, there was no successorship and no major redesign of the delivery of health care services underway. As we have noted, ESLA and HLAA were both in place. The landscape has since changed dramatically and the Associations are entitled to invoke Section 35 of the Code.

36 We declare that a successorship has occurred and that the Health Authorities will be named on the consolidated certifications, but for purposes of administrative description the entries as they now appear will be maintained. Nothing of substance turns on those entries except to the extent that the parties have chosen to define Collective Agreement Employer based on the entries.

37 We also declare that the Board has the jurisdiction to adjust seniority and that some adjustment is warranted in this case. However, before the Board proceeds to make a determination of what the seniority lists should look like, we thought it prudent to give the parties an opportunity to come to a mutually agreeable resolution in a way that only they can best achieve with their experience and knowledge of their industry. In order to achieve this result, the Board orders that the parties engage in settlement discussions with the assistance of its mediation services. The Board's mediator(s) will contact the parties promptly after the publication of this decision. If the parties are unable to reach agreement by the close of business July 31, 2002, the Board shall proceed to determine the appropriate seniority list(s). In making its determination, the Board may call for further submissions, hold further hearings and consider among other things, the effective date of any adjusted seniority list(s).

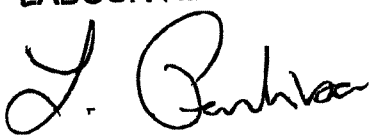
38 In ordering the parties into mediation, we also give the following directions. Any discussion undertaken is not to be with a view to opening up the question of seniority for all purposes. It is to be directed at and focused on ameliorating the impact of the integration and restructuring of health care services delivery, including the effect of the elimination or movement of services, programs, functions, jobs and employees. For example, there is no reason why in populated areas where the Health Authorities have inherited several health care delivery facilities, programs, organizations, worksites, etc.

from several former Regional Health Boards or Community Health Councils that senior employees should be confined to exercising seniority for their one and only bump within the Collective Agreement Employer defined scope. Senior employees have made a large investment and commitment to the job and have organized their lives on the basis of this work and deserve a fair opportunity to maintain employment within a reasonable distance of their current work location. Similarly, employees who are transferred or who apply for positions and are ultimately successful in obtaining them should be able to port their seniority and service dates and carry with them their hard-earned benefits, such as vacation leave, sick leave, and pension. There is no reason to treat them as new employees where they are essentially doing the work they have always done, but at another location.

39 HEABC has argued that such an adjustment to the seniority lists would prejudice employees with less than 5 years seniority who must bump the most junior employee on the seniority list. HEABC argues that such a junior employee exercising his or her bumping option might therefore be forced to move to a far-flung location which as a practical matter is unrealistic and would result in the employee being laid off. With a Collective Agreement Employer-based seniority list, the same employee might have had an opportunity to bump someone within the same facility.

40 With regard to these more junior employees, the Associations have the right to make choices in the best interests of the bargaining unit as a whole which in this case may well favour the more senior employees over the more junior employees in terms of the bumping. However, that is a choice that the Associations are entitled to make under the Code subject to the duty of fair representation. Nonetheless, some other compromise may be available to structure seniority lists that assist and do not hinder the efforts of these more junior employees to retain employment.

LABOUR RELATIONS BOARD



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