B.C. Labour Board Reverses Vancouver Shipyards Decision On Picket Line Crossing

A strike that shut down a major Canadian shipyard was found to be unlawful, setting a precedent for future disputes.

In British Columbia, provincially regulated unionized employees may choose not to cross some picket lines where those picket lines are lawfully permitted under the British Columbia *Labour Relations Code*. This is a limited exception to the definition of "strike" under the BC *Code*, which are otherwise unlawful during the term of a collective agreement.

In September of 2022, the BC Labour Relations Board issued a decision (available here) which took many in the Labour Relations community by surprise, finding that the BC Code's exception to the definition of strike ("picketing that is permitted under this Code"), also applied to picketing activity by federally regulated employees (the "Original Decision").

The context of the Original Decision involved a federal union engaged in picketing a ship building operation/location in which both federal and provincial employers operated. The shipbuilder, Vancouver Shipyards, is a provincially regulated operation located in North Vancouver (the "Employer") whose workforce was represented by a variety of different provincial unions (the "Unions"). The Employer is owned by an entity which also owns a federally regulated tugboat operation at the same location, Seaspan ULC. Seaspan's employees are represented by a federal union, the Canadian Merchant Service Guild (the "Guild").

At the time of the Original Decision, the Guild's members were on strike against Seaspan. Its members picketed the entrance to Seaspan's North Vancouver worksite, which is also the entrance to the Employer's operations. The Employer's provincially regulated employees then refused to cross this picket line to report for work.

In the Original Decision, the Employer argued that since federal picketing is not governed by the BC *Labour Relations Code*, the refusal to cross a federal picket line constituted an illegal strike under the BC *Labour Relations Code.* The Unions argued that its members refusal to cross the picket line was permitted by the *Code*, regardless of whether the picket line was established under or governed by federal or provincial labour relations legislation..

In the Original Decision, the Labour Board favoured the Unions' arguments, finding

the exception to the definition of strike contained in the BC Code created an exception for honouring lawful picket lines, regardless of whether those picket lines are regulated by provincial or federal labour relations legislation.

This decision was a departure from prior decisions of the BC Labour Board, and of considerable interest and concern for employers whom operate at sites containing both provincially regulated and federally regulated operations.

The Employer applied for reconsideration of the Original Decision. The Reconsideration Decision has now been issued and can be found here. In the Reconsideration Decision, a panel of the Labour Relations Board overturned the Original Decision. Importantly, the Board found that the limited exception to the definition of a "strike" contained in the BC *Labour Relations Code* only creates an exception where a refusal to work is due to picketing which is expressly permitted and governed by the British Columbia *Labour Relations Code*. As picketing occurring at a federally regulated employer is not governed by the BC *Labour Relations Code*, a concerted refusal by provincially regulated unionized employees to cross a federal picket line amounts to an unlawful strike.

This development in BC Labour Relations law is of considerable importance to both federal and provincial employers, particularly those who operate at common sites.

by Eric Kroshus (Vancouver)
Mathews Dinsdale & Clark