

**BRITISH COLUMBIA LABOUR RELATIONS BOARD**

KGIC LANGUAGE COLLEGE (2010) CORP. AND PGIC  
VANCOUVER STUDIES INC.

("KGIC" and "PGIC" respectively)

-and-

SPROTT SHAW LANGUAGE COLLEGE INC.

("SSLC BC")

-and-

EDUCATION AND TRAINING EMPLOYEES ASSOCIATION

(the "Union" or "ETEA")

PANEL: Jennifer Glougie, Vice-Chair

APPEARANCES: Robert Sider and Ritu Mahil, for the  
Employers  
G. James Baugh, for the Union

CASE NO.: 70638

DATE OF DECISION: September 14, 2017

## **DECISION OF THE BOARD**

### **I. NATURE OF APPLICATION**

1 This decision concerns an application brought by the Union under Sections 35  
and 142 of the *Labour Relations Code* (the "Code"). The application arises as a result  
of SSLC BC's acquisition of KGIC and PGIC, effective March 29, 2017. SSLC BC  
agrees that it is the successor employer to KGIC and PGIC effective that date.

2 The effect of the successorship on the Union's bargaining rights remains in issue.  
Specifically, the parties disagree as to whether the KGIC certification should be varied  
to reflect the merged bargaining unit or whether a run-off vote is necessary in the  
circumstances. If a run-off vote is not ordered, then the parties disagree as to which  
collective agreement should govern the merged unit. The Union has asked that the  
Board decide these issues pursuant to its authority under Section 35 of the Code.

3 I am able to decide the matter on the basis of the written submissions filed by the  
parties without the need for an oral hearing.

### **II. BACKGROUND**

4 The ETEA is a member of the Federation of Post-Secondary Educators of British  
Columbia.

5 Both KGIC and PGIC are English-as-a-Second Language ("ESL") schools  
accredited with Languages Canada.

6 The ETEA was certified to represent a unit of employees at KGIC on November  
18, 2010. The KGIC certification describes the bargaining unit as "teachers at the  
Vancouver (Robson), Surrey and Victoria campuses". The current collective agreement  
has a term of March 1, 2015 to February 28, 2018 (the "KGIC Agreement").

7 On January 20, 2014, the ETEA was certified to represent a unit of employees at  
PGIC composed of "teachers at and from 1155 Robson Street, Vancouver, BC, except  
administrative support staff". The PGIC collective agreement has a term of July 20,  
2015 to June 30, 2018 (the "PGIC Agreement").

8 CIBT Finance (2017) Corp. acquired KGIC and PGIC, as a result of certain  
bankruptcy proceedings in March 2017. It also acquired Study English in Canada  
(Vancouver) Inc. ("SEC"). SEC is also an ESL school, located at 549 Howe Street. The  
employees of SEC are not unionized. On or about March 22, 2017, CIBT Finance  
(2017) Corp. subsequently changed its name to SSLC BC.

9 On or about March 29, 2017, the former KGIC and PGIC employees became employees of SSLC BC. Some former KGIC and PGIC employees were relocated to SEC's premises and intermingled with SEC's five non-union employees.

10 The parties agree that SSLC BC is the successor employer to KGIC and PGIC. The parties also agree that, at the time of the successorship, there were 44 employees in the KGIC bargaining unit, 29 employees in the PGIC bargaining unit, and five non-union SEC employees.

### III. POSITIONS OF THE PARTIES

11 The Union says it represents 73 of the 78 SSLC BC employees; therefore, it says a run-off vote would be unnecessary and inappropriate. The Union says, because it is the larger of the two units, the Board should order that the KGIC certification be varied to reflect the successorship and the KGIC Agreement should apply to the employees in the intermingled bargaining unit. The Union relies on *United Rentals of Canada Inc.*, BCLRB No. B197/2012; *The Corporation of the District of North Cowichan*, BCLRB No. B200/2008; and *Wajax Industries Limited*, BCLRB No. B22/94.

12 By way of remedy, the Union seeks the following:

1. a declaration pursuant to Section 35 of the Code that SSLC BC is the successor employer to KGIC and PGIC;
2. An order that the November 18, 2010 certification for the ETEA as bargaining agent for KGIC employees in a unit composed of teaching faculty at the Vancouver (Robson), Surrey and Victoria campuses be amended to name SSLC BC as the employer, and that the bargaining unit be described as "teaching faculty at the Vancouver, Surrey and Victoria campuses";
3. An order that the KGIC Agreement applies to the bargaining unit covered by the amended certification order;
4. A declaration that the bargaining unit covered by the amended certification order constitutes a unit appropriate for collective bargaining, comprising the employees previously covered by the KGIC and PGIC certifications plus the SEC teaching faculty working at and from 549 Howe Street, Vancouver, British Columbia;
5. An order that the seniority of the former KGIC and PGIC employees and the SEC teaching faculty working at and from 549 Howe Street be dovetailed in accordance with Article 10 of the KGIC Agreement;
6. An order cancelling the PGIC certification and the PGIC Agreement; and

7. Such other remedies as are appropriate in the circumstances.

13 The Employer agrees SSLC BC is the successor employer to KGIC and PGIC and does not take issue with the appropriateness of the intermingled unit but says a run-off vote is necessary in the circumstances. It says the former employees of KGIC and PGIC were represented by different locals of the ETEA; Local 6 for KGIC and Local 10 for PGIC. Therefore, the Employer says, a run-off vote is necessary to determine which local, if any, should represent employees in the merged unit. The Employer says, if the employees choose to be represented by either Union, then it is prepared to acquiesce to the Union's proposal that the seniority of all employees should be dovetailed in accordance with their start dates with their previous employers.

14 In the alternative, the Employer says, regardless of whether a run-off vote is ordered, the KGIC Agreement should continue to apply to former KGIC employees and the PGIC Agreement should continue to apply to former PGIC employees until the parties have the opportunity to bargain a collective agreement for the intermingled unit. It says there is a significant wage disparity between the KGIC Agreement and the PGIC Agreement and it would be inappropriate to allow the former PGIC employees to gain an advantage by entitling them to the superior terms and conditions in the KGIC Agreement. It relies on *British Columbia Institute of Technology*, BCLRB No. 48/85 (Leave for Reconsideration dismissed, BCLRB No. 163/85 ("*BCIT*") for the proposition that employees can be red-circled at the wage rates set out in their previous collective agreements, despite a successorship. Finally, the Employer says the wage rate for the previously non-unionized SEC employees should be that which is set out in whichever collective agreement the Board decides applies.

15 In reply, the Union says the ETEA is the bargaining agent for both the former KGIC employees and the former PGIC employees. It says the reference to "Local 6" in the KGIC Agreement and to "Local 10" in the PGIC Agreement are purely administrative. The certifications for both the KGIC bargaining unit and the PGIC bargaining unit list the ETEA as the certified bargaining agent, not a local of the ETEA. The Union says it would be inappropriate to order a run-off vote between two locals that exist only for administrative purposes. The Union says it represents 73 of the 78 SSLC BC employees; therefore, it says a run-off vote would be unnecessary and inappropriate. The Union says, as the larger unit, the Board should order that the KGIC certification be varied to reflect the successorship.

16 Finally, the Union says there is no basis on which to justify red-circling the PGIC employees under the PGIC Agreement. It relies on *Agropur Division Natrel (Island Farms)*, BCLRB No. B27/2015 (Leave for Reconsideration denied, BCLRB No. B56/2015) ("*Agropur*"), where the Board said:

With respect to the RWU's position that there is a very substantial difference in wages and benefits between the two applicable collective agreements, I find that it is not possible to conclude that the RWU-Lucerne collective agreement is necessarily superior to the Teamsters-Agropur collective agreement. While this may be

the case in some respects, it also remains that there are elements that may be inferior. The Employer notes that, unlike the Teamsters-Agropur collective agreement, the RWU-Lucerne agreement does not have a "valuable LTD benefit" or a "pension plan that can compare to that of the Teamster's agreement". No authority has been put before me in support of the proposition that the value of the competing collective agreements is material to the dispute at hand. In any case, it is apparent that a comparison of the relative "worth" of the two collective agreements would be futile. (at para. 16)

The Union says *BCIT* is distinguishable on the facts. In that case, the Board found that Douglas College was the successor employer to *BCIT* with respect to the employees in the forensic nursing program. The Board further found that the Douglas College collective agreement governed the merged unit. The Union says, in that case, the Board red-circled the employees of the predecessor employer at the higher wage rates they enjoyed under the collective agreement with *BCIT*. That is, the Board red-circled higher wage rates in *BCIT*, not lower rates as the Employer proposes here. Finally, the Union says it would be entirely inappropriate to red-circle the former *PGIC* employees at the lower wage rates set out in the *PGIC* Agreement while allowing the formerly non-unionized *SEC* employees the wage rates set out in the *KGIC* Agreement.

#### IV. ANALYSIS AND DECISION

17 The parties agree *SSLC BC* is the successor employer to *KGIC* and *PGIC* and ask the Board to exercise its discretion under Section 35 of the Code to determine what, if any, bargaining rights the Union maintains with respect to the merged unit. Section 35 provides as follows.

**35** (1) If a business or a part of it is sold, leased, transferred or otherwise disposed of, the purchaser, lessee or transferee is bound by all proceedings under this Code before the date of the disposition and the proceedings must continue as if no change had occurred.

(2) If a collective agreement is in force, it continues to bind the purchaser, lessee or transferee to the same extent as if it had been signed by the purchaser, lessee or transferee, as the case may be.

(3) If a question arises under this section, the board, on application by any person, must determine what rights, privileges and duties have been acquired or are retained.

(4) For the purposes of this section, the board may make inquiries or direct that representation votes be taken as it considers necessary or advisable.

(5) The board, having made an inquiry or directed a vote under this section, may

- (a) determine whether the employees constitute one or more units appropriate for collective bargaining,
- (b) determine which trade union is to be the bargaining agent for the employees in each unit,
- (c) amend, to the extent it considers necessary or advisable, a certificate issued to a trade union or the description of a unit contained in a collective agreement,
- (d) modify or restrict the operation or effect of a provision of a collective agreement in order to define the seniority rights under it of employees affected by the sale, lease, transfer or other disposition, and
- (e) give directions the board considers necessary or advisable as to the interpretation and application of a collective agreement affecting the employees in a unit determined under this section to be appropriate for collective bargaining.

18 Where a union can show that the majority of employees in the intermingled group are members in good standing, the Board will not generally order a representation vote; in those circumstances, the Board will certify the union as the bargaining agent for the intermingled group: *Maxxam Analytics International Corporation*, BCLRB No. B202/2010 (Leave for Reconsideration of BCLRB No. B113/2010), at paragraph 29. Similarly, the Board will generally not order a representation vote where less than one-third of the employees in the intermingled group were previously represented by a different, competing union: *Agropur*, at paragraph 23.

19 The Employer says, in the present case, a run-off vote must be held to determine whether the merged unit should be represented by Local 6 or Local 10 of the ETEA. I am not satisfied that separate locals of the ETEA exist for the purposes of the Code. To the extent the KGIC Agreement refers to Local 6 and the PGIC Agreement refers to Local 10, I accept the Union's position that those designations are purely administrative. As noted, the certifications for both KGIC and PGIC identify the ETEA as the bargaining agent, rather than individual locals of the ETEA. I find that the ETEA represents both the previous employees of KGIC and PGIC and, as a result, it has demonstrated the majority support among employees in the merged unit. I decline to exercise my discretion to order a run-off vote in the circumstances. Since the unit of former KGIC employees is the larger of the two units, I find it is appropriate to amend the KGIC certification to reflect the intermingled unit.

20 The Employer did not take issue with the appropriateness of the intermingled unit. I am satisfied that the intermingled unit comprised of the former employees of KGIC, PGIC, and SEC is appropriate for collective bargaining.

21 The Employer says the KGIC Agreement should not apply to former PGIC employees. It says the KGIC Agreement contains superior benefits than the PGIC Agreement and it would be inappropriate to give the former PGIC employees the advantage of those superior benefits when the Union was unable to negotiate those benefits on their behalf. In *Agropur*, the Board questioned whether the value of competing collective agreements is ever material to a determination under Section 35 of the Code. However, putting that question aside, I am not persuaded on the evidence that the KGIC Agreement is superior to the PGIC Agreement when viewed as a whole. Other than a general reference to wage disparity, the Employer has not provided a comparison of any other benefits contained in either agreement or otherwise indicated on what basis it argues the KGIC Agreement is superior. In any event, even if the KGIC Agreement were superior to the PGIC Agreement, and I make no findings in that regard, I accept the Union's argument that it would be unfair if the previously unorganized SEC employees were entitled to the superior benefits in the KGIC Agreement but not the former PGIC employees. Therefore, even if the KGIC Agreement were superior to the PGIC Agreement and even if such valuation were material to the question before me, I would decline to exercise my jurisdiction under Section 35 of the Code to "red-circle" the PGIC employees until the PGIC Agreement expires. I find it is appropriate in the circumstances for all of the employees in the intermingled unit to be governed by the KGIC Agreement.

22 The Employer was prepared, depending on the outcome of a run-off vote, to acquiesce to the Union's suggestion that the seniority of the former KGIC, PGIC, and SEC employees be dovetailed in accordance with their start dates with their respective previous employers after a run-off vote. Even though a run-off vote was not ordered, I find that to be the appropriate method to resolve the seniority issues arising out of the intermingling of the three groups of employees.

23 To summarize, I order the following:

1. that SSLC BC is the successor employer to KGIC and PGIC pursuant to Section 35 of the Code;
2. that the November 18, 2010 certification for the ETEA as bargaining agent for KGIC employees in a unit composed of teaching faculty at the Vancouver (Robson), Surrey and Victoria campuses be amended to name SSLC BC as the employer, and that the bargaining unit be described as "teaching faculty at the Vancouver, Surrey and Victoria campuses";
3. that the KGIC Agreement applies to the bargaining unit covered by the amended certification order;
4. that the bargaining unit covered by the amended certification order, comprised of the former employees of KGIC and PGIC and the SEC teaching faculty working at

and from 549 Howe Street, constitutes a unit appropriate for collective bargaining;

5. that the seniority of the former KGIC and PGIC employees and the SEC teaching faculty working at and from 549 Howe Street be dovetailed in accordance with their start dates with their respective previous employers; and
6. that the PGIC certification and the PGIC Agreement be cancelled.

V. CONCLUSION

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For the reasons given above, the Union's application is granted.

LABOUR RELATIONS BOARD

**"JENNIFER GLOUGIE"**

JENNIFER GLOUGIE  
VICE-CHAIR