**BRITISH COLUMBIA LABOUR RELATIONS BOARD**

THE ROADERS HOLDING CO. LTD.
(SEARS CARPET AND UPHOLSTERY CLEANING)

(the "Employer")

-and-

TEAMSTERS LOCAL UNION NO. 464

(the "Union")

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| PANEL: | Allison Matacheskie, Vice-Chair and Registrar |
| APPEARANCES: | Gradin D. Tyler, for the Employer<br>Michael Prokosh, for the Union |
| CASE NOS.: | 61403, 61443 and 61602 |
| DATES OF HEARING: | November 19, 2010,<br>January 10, 14 and 17, 2011 |
| DATE OF DECISION: | March 4, 2011 |

## DECISION OF THE BOARD

### I. NATURE OF THE APPLICATION

1 On November 2, 2010, the Union filed an unfair labour practice complaint under Sections 6(1) and 6(3)(d) of the *Labour Relations Code* (the "Code") alleging that the Employer made anti-union statements at a captive audience meeting advocating for a decertification application, and refused to remit dues or to post the seniority list in compliance with the collective agreement.

2 On January 7, 2011, the Union filed an additional unfair labour practice complaint alleging that the Employer had breached Sections 5 and 6(3)(a) of the Code when it ended a long-term accommodation for the Union shop steward and placed him on a leave of absence. On November 12, 2010, the Board received an application from Certain Employees applying for decertification under Section 33(2) of the Code. The Union also seeks an order under Section 33(6) that the Board refuse to cancel the certification due to improper interference by the Employer.

### II. FACTS

3 The Employer is a small carpet and upholstery cleaning business. It is certified to the Union for a bargaining unit of approximately 14 employees who are either senior or junior technicians who clean carpets and upholstery in residences and businesses.

4 Chris Ravanello ("Ravanello") purchased the certified business on August 1, 2010. He operates and manages the business. Mark Fernandes ("Fernandes") is an excluded manager who runs the day-to-day operations.

5 Clause 22.01 of the collective agreement between the parties states that:

> This Agreement shall be in effect from October 1st, 2006 to September 30th, 2010 inclusive, and from year to year thereafter, unless notice of abrogation or amendment shall be given by either Party to the other Party in writing within four (4) months prior to the anniversary date hereof, in any year.

6 On November 4, 2010, Ravanello sent an email to the Union stating:

> As you are aware our current collective agreement expired on September 30, 2010 and is now in effect on a year to year basis. At this time I wish to implement clause 22.01 of that agreement and issue this formal notice of abrogation. The existing agreement has proven to be a hindrance to the sustainability and growth of the company and needs to be reevaluated and corrected. In 2006 when the current agreement was signed the company has seen revenues decline significantly and costs rise. I have made attempts over the last two quarters to address these issues and have found it impossible to resolve them under the restraints of our current agreement.
>
> I have no choice at this time but to offer this notice to abrogate the current agreement as of September 30 2011.

7 On November 5, 2010, the Union asked the Employer to post a notice addressed to all bargaining unit members advising them that there would be a meeting on November 15, 2010 to discuss their proposals for collective bargaining and any other issues that may arise. The Employer posted the notice as requested.

8 On October 27, 2010, Ravanello had a discussion with Russell Bollen ("Bollen"). Bollen is a senior technician and the shop steward. Bollen and Ravanello have different versions on the content of the conversation. Bollen says they were discussing promotional ideas and Ravanello told him he could raise that issue at the meeting the next day. At 7:00 a.m. every morning, Fernandes has a meeting with the bargaining unit employees where he distributes the routes for the day. At times, other work related matters are discussed at this meeting. There is a dispute on the evidence as to how often Ravanello attends these meetings. I find that nothing turns on this point as there is no dispute that it is not unusual for Ravanello to attend these meetings.

9 Ravanello does not deny that they spoke about promotional ideas at the same time but recalls telling Bollen that he was going to address rumours at the workplace at the meeting the next day. He says the rumours concerned negotiations with the Union, new trucks and equipment, and issues of junior technicians being laid off at Christmas time. Bollen says he was not told that the purpose of the meeting was to address such rumours.

10 The next day, on October 28, 2010, the regular 7:00 a.m. meeting took place (the "October 28 meeting"). Ravanello and Fernandes were there on behalf of the Employer. There is a dispute on the evidence as to whether the representative for Certain Employees attended the October 28 meeting. However, there is no dispute that all other bargaining unit employees were present at the meeting. There is no assertion or evidence before me that the representative of Certain Employees made any statements or took any active part in the meeting and therefore, I find nothing turns on the disputed evidence concerning his presence at the meeting.

11 Ravanello denies making specific statements attributed to him by Bollen. Ravanello was consistent in his evidence that the purpose of his attendance at the meeting was to address rumours in the workplace and address concerns with the collective agreement. Bollen said Ravanello did not address any rumours.

12 There is no dispute on the evidence that Ravanello had a document with him at the October 28 meeting (the "Handout"). There is a dispute as to when Bollen received it. Bollen says a few employees at the meeting had copies of the Handout and when he asked for a copy of it, an employee gave him one. During his testimony, Bollen agreed that the Handout was not handed out at the meeting. However, when he sent the Handout by facsimile to the Union later that day, he wrote on the cover sheet that it was "handed out to everyone but me before the meeting". Ravanello says he gave a copy of the Handout to Bollen about twenty minutes before the meeting. He also left a pile of them at reception for employees to take before the meeting.

13 The Handout is titled "Contract Changes". The first clause in the collective agreement referred to is Clause 1.01 which states that the Employer recognizes the Union as the sole bargaining agent for the employees in the bargaining unit. The Employer's Handout states:

> 1.01 Needs to be changed or removed to allow the company to negotiate with individual employees as need be.

14 Clause 1.02 in the collective agreement states that the collective agreement covers all employees engaged in work within the scope of the bargaining unit. The Employer's proposed change as set out in the Handout is:

> 1.02 Needs to be changed to allow new employees the right to decide if they want to join the union or not.

15 Clause 1.03 in the collective agreement states as follows:

> a) Any person not a member of the Union shall not work at occupations which come under the Unions jurisdiction, except in cases of emergency and then only until a member of the Union can be placed on the job.
>
> b) The Parties hereto shall not use any leasing device to a third party, which has the effect of evading this Agreement. Furthermore, no change will be made in the method of doing business, which will result in present employees becoming jobbers or franchise operators or being replaced by jobbers or franchise operators.
>
> c) If opportunities should arise during the term of this agreement the Union will meet with the Company to discuss their possible implementation.

16 The Employer's proposal to change this clause is as follows:

> 1.03 Needs to change to allow the company to negotiate with individual employees regarding future opportunities i.e. contracting out or leasing etc.

17 Clause 1.04 of the collective agreement provides that all employees must become members of the Union within 14 days of commencing employment. Clauses 1.05 and 1.06 set out the automatic authorization for dues deductions and the process to be used for collection and remittance to the Union. The Employer's proposal in the Handout concerning these clauses of the collective agreement is that all employees must be given the choice to join the Union or not and deductions from their cheques must be agreed to by each individual employee.

18 Clause 9 of the collective agreement sets out various provisions concerning the use of seniority in the context of probation, lay-off and recall. In the Handout, the Employer proposes a shorter probation period and a higher wage for junior technicians and proposes to remove seniority as a consideration for lay-off and route selection for employees. In particular, it states the following for Clause 9.01, the probation provision, and for Clause 9.05, the lay-off provision:

> 9.01 New employees will be on probation for 2 months. In the period they will be paid as per the junior Tech scale of 15% 21% 26% after the 2 month training period they will be paid according to the senior scale of 18% 25% 30%.
>
> 9.05 Needs to read that employees will only be evaluated on job performance and all decisions will be made based on performance not seniority.

19 There is no dispute that this Handout was made available for the employees at the October 28 meeting and was presented as Ravanello's initial position on how the

collective agreement needed to be changed. Bollen and Ravanello are consistent in their evidence that Ravanello did not specifically go through each of the proposed changes to the collective agreement listed in the Handout. Ravanello says he provided this document to the employees to explain the ways in which he would be seeking to improve the collective agreement to make it more workable for the company going forward.

20 As noted above, there is a dispute on the evidence as to exactly what Ravanello said at the October 28 meeting. Bollen says that the first thing that Ravanello said was "you guys don't need a union. Seven employees here don't want to pay union dues and I can't make them. You guys need to make a decision". Bollen says that Ravanello then went on to say that some employees want to subcontract or lease out the vans, and they cannot do it because of the Union. Bollen says Ravanello also told the employees that he needs full control of the company to make it work and the Union is taking that control from him. Bollen says that Ravanello repeated that they did not need a union and told them he had to go by the Labour Board rules anyway. Bollen says Ravanello also told the employees that the Union is about seniority and he would not negotiate a period of seniority and Paul Barton ("Barton"), the Union representative, is aware of that. Ravanello also said that the Union has allowed the employees to milk the company for years.

21 Ravanello denies making these statements and said that this meeting related only to rumours in the workplace, concerns with the collective agreement, and how he intended to address those concerns in bargaining with the Union.

22 Concerning the rumours, he said he had everyone in the room and started the meeting, but then turned it over to the employees. He says he told them they should speak to their Union representative and did not participate in what they were telling each other. He says he participated as a referee as these are internal issues between Union members.

23 Concerning his proposed changes to the collective agreement, he said he was not involved in the negotiation of the collective agreement and if he had been, it would be different. His intention in bargaining now is to start over and get a collective agreement they can all work within. When he was asked if he made the statement at the October 28 meeting that the Union is all about seniority and he will not negotiate seniority, he denied making that statement at the meeting. However, he went on to explain that he has made it clear how he feels about seniority and feels it is breeding hostility between the workers. He said 70% of the workers are laid off each year in the slow season and it breeds discontent. He thinks all the employees should earn the same wage. Concerning the Handout, he said he wanted to be clear that there were certain things he fundamentally disagreed with and this was his opening position for changes to the collective agreement.

24 In cross-examination, when asked if he said seven employees refuse to pay dues, Ravanello says he addressed the rumour that some employees have a problem with paying dues and he told them to speak with Bollen or the Union about that.

25 When Ravanello was asked in cross-examination if he said he needed freedom to lease out trucks, he said that was not completely accurate. He agreed that employees had approached him asking about that possibility and he told them it falls outside of the collective agreement and there is nothing he can do about that.

26 Concerning his proposal to allow individual negotiations with employees, he said it results from a conversation he had with an employee who would really like to lease a vehicle. Ravanello's response was that he cannot do it under the collective agreement. He agrees that the position as a carpet cleaner technician only goes so far and he wants to accommodate employees who want to expand and grow bigger. He explains that the proposed changes to the collective agreement set out in the Handout are a result of a culmination of conversations with employees.

27 After the meeting, Bollen went to the first client on his route for the day. While waiting for the cleaning solution to soak the carpet for ten minutes, he went to his truck and wrote notes of what happened in the meeting on different scraps of paper. After he finished with the first client, he stopped at his home and sent the Union a copy of the Handout by facsimile. On the cover sheet for the facsimile, he wrote "handed out to everyone but me before the meeting ... meeting was set up to shut union down". He did not attach the notes he made in his vehicle that day. About a month prior to the hearing, Bollen transcribed those notes onto one sheet of paper. He added other points concerning things that happened after the October 28 meeting. He reviewed these notes prior to testifying.

28 Under the terms of the collective agreement, the Employer is required to post the seniority list. In November 2010, Bollen asked Fernandes on three occasions about putting up the seniority list. The first time Fernandes responded that he would, then he said "I heard you" and finally told Bollen to talk to Ravanello about any Union matters.

29 On December 20, 2010, Bollen filed a grievance concerning the Employer not posting the seniority list. On the same day, he met with Fernandes in his office concerning the grievance. Fernandes told him he had to be careful of his accusations and that the seniority list has been posted for five years and everyone knows where it is. Fernandes then pointed to the seniority list posted on the wall behind his desk. Bollen told him he had never seen it there before. Fernandes said it was always there. Bollen then stopped three other employees who came by the office and asked each of them if they had seen the list. They all replied "no". Bollen then turned to Fernandes and said "you just told me everyone knows. I just asked three people and they said no." Fernandes then asked Bollen if he was calling him a liar and told him to get out of his office.

30 On December 20, 2010, Bollen also filed a grievance alleging that the Employer "has decided to ignore seniority by spreading available bookings thinly, 2-3 jobs per day, over all technicians" resulting in significant financial loss to the senior technicians. Ravanello met with Bollen on the same day. Ravanello produced documents concerning Bollen's pay and said that even though he was working one day less per week and doing fewer jobs, he was making more money. Bollen responded that he would need to review the documents and investigate. They also spoke about the grievance concerning posting the seniority list. Ravanello maintained the seniority list has been posted in Fernandes' office for the last five years and everyone knows about it.

31 Ravanello had previously told employees that he thought the junior technicians should get the same wage as the senior technicians. In this meeting, Bollen says he told Ravanello that the Union did not have a problem with that and it was just a matter of a simple phone call to the Union. He says Ravanello responded that he would use it as

a bargaining ploy and he will not bargain seniority. He said the contract will become void because 60 percent of the employees are junior technicians and there will be no strike vote. Ravanello denies that this part of the conversation took place.

32 On January 4, 2011, Fernandes presented Bollen with a letter which advised him he was placed on a leave effectively immediately until he was medically cleared to work with no restrictions. The letter states in full:

> As you know call volume is very low and it has become increasingly more challenging to put together portable free routes. At this time and moving forward, it is necessary that each employee be able to perform full duties.
>
> I have assumed your doctor's restrictions remain the same as the August 2010 functional abilities report; therefore it is necessary to put you on leave, until you are medically cleared for full duties with no restrictions. A letter from your doctor will be required before returning to work.

33 Bollen suffered an injury in August of 2008 which prevented him from lifting a portable cleaning machine that is required for certain jobs. Since August 2008, the Employer has accommodated Bollen by creating a route for him which did not require the use of portables. In 2009 and 2010, 75 percent of the bargaining unit was laid off during the slow season. At the time of the hearing of this matter, the business was in the slow season but there were minimal lay-offs compared to previous years. Bollen was not laid off in 2009 or in 2010 and the Employer continued to schedule him for a route which did not require the use of portables.

34 The Employer is in arrears for its dues remittances to the Union. The Union claims it is approximately $4000 in arrears and the Employer claims it is a lesser amount. From September through to December, the Union and the Employer communicated through email concerning the dues owing. The Employer claims that the Union has historically accepted dues on a quarterly basis. The Union asserts that it must be paid monthly and the Employer is aware of its obligation. On reviewing the documentation concerning dues payments for the previous years under the previous ownership, it is clear that dues have not been remitted on a monthly basis. They were often remitted in a lump sum for a two to four month period.

35 Concerning initiation fees, Ravanello says that he understood that initiation fees had to be paid in full at the commencement of employment. The Union asserts that Ravanello knew the Union did not insist on full payment and this was further evidence of his anti-union animus that he was telling employees it had to be paid in full. On November 9, 2010, the Union office administrator sent an email to Ravanello advising that the Union representative servicing the bargaining unit had asked her to clarify with him the process regarding payment of initiation fees. She then confirms in the email that the full initiation rate can be paid over a period of up to three months, depending on the size of the employees' pay cheque.

## III. SUBMISSIONS

36 The Employer submits that the Union's case is built entirely on speculation and hearsay evidence. It says the only employee witness the Union called was Bollen and it

submits that the evidence of Ravanello should be preferred over the evidence of Bollen relying on the principles in *Faryna v. Chorny* (1951), 4 W.W.R. (NS) 171 (BCCA).

37 The Employer says it is both illogical and incongruent with the preponderance of the probabilities, which a practical and informed person would readily recognize as reasonable in that place and in those conditions, to believe that Ravanello would go out of his way to invite the Union's shop steward to a meeting and then proceed to make a number of blatant anti-union statements. It says this flies in the face of common sense.

38 The Employer says Bollen gave evidence about the fallibility of his memory, acknowledging that he does not remember all that he heard at the meeting and suggesting that some things still come to him while others he simply does not remember.

39 The Employer says one would expect Bollen, as shop steward, to have spoken up in response if such harsh statements had actually been made by the Employer. The Employer submits that it is unreasonable to believe that Bollen, an outspoken Union advocate, would sit idly by while the Employer made the alleged comments to a group of employees.

40 The Employer also submits that it is noteworthy that none of these alleged statements were set out in the particulars provided by the Union in the written submissions to the Board prior to the hearing. It says surely if such inflammatory statements were truly spoken, the Union would have deemed it vital to include them in their particulars.

41 Bollen alleges he made notes of the meeting about an hour and a half afterward. However, these notes were not relied on by the Union, nor were the contents of those notes contained in the particulars. Further, the notes detail events that occurred after the notes were allegedly taken, and they contain references to the exact time Bollen alleges the statements were made despite the fact that they were recorded over an hour and a half after the fact. For these reasons, the Employer submits the notes lack reliability and credibility and cannot be taken as support for Bollen's version of events. It says it is much more likely that these notes were drafted by Bollen in preparation for his testimony at this hearing.

42 The Employer also says it distributed the Handout to outline the changes it would be seeing in bargaining with the Union. It says if Ravanello was suggesting that the Union was unnecessary and this was some attempt to oust the Union, why would he produce a document showing how he intended to bargain with the Union. It says why would Ravanello be seeking to improve the collective agreement if he was trying to motivate employees to end the certification with the Union.

43 The Employer says the Union has the onus with respect to this complaint and has failed to put forth any bargaining unit employee other than Bollen to substantiate these alleged statements made by Ravanello during the meeting, despite the presence of numerous employees in attendance at the meeting. It submits that on the preponderance of probabilities, anti-union statements were not made and the Union has failed to discharge the onus of proving these statements were made. It says far from motivating the employees to decertify, Ravanello was suggesting to the employees that improvements to the collective agreement could be achieved through the collective bargaining process.

44 It says the Union has not presented any evidence relating to any promises made or benefits provided to employees by the Employer to compel or induce them to cease membership in the Union as required by Section 6(3)(d). It says any changes he hoped to achieve to the collective agreement would only remain in force if the employees remained certified. It says any such benefits achieved in this manner would be lost by the employees upon decertifying the Union. The Employer says it is a huge leap to find that the proposals to change the union security clause as suggested by Ravanello are an attempt by the Employer to get the employees to decertify.

45 The Employer submits that the October 28 meeting is best described as an information meeting and is nothing more than Ravanello trying to promote transparency in the workplace which is a valid reason for the Employer to hold the meeting: *Gateway Casinos Limited Partnership,* BCLRB No. B258/2007 (Leave for Reconsideration of BCLRB No. B236/2007), 150 C.L.R.B.R. (2d) 154.

46 The Employer says it has not bargained directly with the employees. The Employer only advised them of the changes it wanted to the collective agreement. The Employer made no representations to employees about a willingness or ability to achieve those benefits outside of a collective agreement. It says a desire to negotiate changes to the collective agreement does not demonstrate an anti-union animus.

47 The Employer says there was no suggestion that decertification was necessary, or even helpful, to achieving the benefits in the Handout. Decertification was never mentioned and there is no evidence that the Employer even knew there was a decertification campaign going on. It says this is not a case where the Employer has demonstrated tacit approval for the decertification or otherwise interfered with the Union, as was the case in *C-Tron Systems Corp.,* BCLRB No. B39/95.

48 The Employer says the majority of the Union's evidence relates to alleged incidents which occurred well after the filing of this complaint on November 2, 2010 and the representation vote relating to the decertification application which occurred on November 20, 2010. It says that even if the alleged incidents happened they could not possibly have any impact on the decertification application or the representation vote and therefore the vote should be counted. Concerning the December 20, 2010 grievance discussion between Ravanello and Bollen, the Employer says it occurred over a month after the representation vote and therefore, has no bearing on the application.

49 The Employer says, at the end of the day, the Union's complaint really amounts to one meeting between the Employer and employees, the conversation therein, the documents some employees may have reviewed at that meeting, and the resulting conclusions that can be drawn by the Board.

50 The Employer submits that in the email where Ravanello says the collective agreement is a hindrance it is clear that the Employer is talking about terms of the collective agreement and not about the Union.

51 The Employer submits that the complaint under Section 6(3)(d) should be dismissed as there is no evidence of any anti-union animus in this case. It says the surrounding circumstances and contextual factors do not support an inference of anti-union animus.

52 The Employer submits that even if I find that the allegations amount to improper interference, no remedy is required under Section 33(6) as, on an objective basis, it cannot be reasonably inferred that the conduct complained of will cause it to be unlikely that the decertification vote will reflect the true wishes of the employees: *Mahara Electric Ltd.*, BCLRB No. B349/96, *Trinity Centre Care Society*, BCLRB No. 119/87, *Insta-Box Vancouver Ltd.*, BCLRB No. 29/86.

53 It says where unlawful conduct by the Employer has tainted the employees' application, but the evidence indicates a representation vote remains an effective means of determining their true wishes, the Board may consider intermediate remedies, short of dismissal of the application: *Granville Island Hotel and Marina Limited*, IRC No. C89/88, *Thompson Interior Savings Credit Union*, BCLRB No. B336/2003. The Employer says in this case, it cannot be reasonably inferred that the actions complained of played any role in the pursuit of decertification by Certain Employees of the Employer. The Employer submits, in the alternative, if the Board finds the Employer's actions have in any way tainted the application for decertification, it would be appropriate to hold a new representation vote as an effective means of determining the employees' true wishes.

54 Concerning the dues in arrears, the Employer submits that this is not a case where an employer is seeking to interfere with the administration of a union by purposefully withholding or choosing not to deduct union dues. It says the Employer's present practice of remitting dues quarterly is consistent with the historical practice between the parties and is established by the Union's documentary evidence. The Employer also says it has not paid the outstanding amount owing as it is seeking clarification of the amount the Union says is in arrears.

55 Concerning the initiation fees, the Employer submits that it understood from the previous owner that employees were required to pay the full Union initiation fee when they commenced employment. The Employer says it was not privy to any special arrangement with the Union for payment by installments and there is nothing in the collective agreement concerning payment of initiation fees. It says these acts are neutral and do not show any anti-union animus.

56 Concerning the posting of the seniority list, the Employer says it has always posted the seniority list. It also says that the grievance and resulting conversations occurred long after the representation vote and therefore could not have any impact on the decertification application even if a breach of the Code could be found.

57 Concerning the Union's complaint under Section 6(3)(a), the Employer accepts that it has the initial burden of leading evidence to establish a credible explanation for the change to Bollen's employment status that does not involve any anti-union animus. However, once this initial burden is met, it shifts to the Union to present credible evidence of some anti-union motive for the Employer's decision or circumstances from which the Board could reasonably infer the existence of such a motive: *Bilfinger Berger (Canada) Inc.*, BCLRB No. B287/2005.

58 The Employer says that Bollen was put on a medical leave of absence for the sole reason that the Employer was unable to provide enough work that fit within his medical restrictions due to the fact that there is significantly less work available in the slow period. It says this is a credible explanation sufficient to meet its initial burden. It

says it is not required to provide evidence regarding the sufficiency of its accommodation of Bollen as this is not a matter for the Board to consider.

59 The Employer says there is no evidence to suggest that Bollen's status as a Union member or shop steward motivated the Employer to take this action. It also relies on the fact that the unfair labour practice was filed over two months before it took this action. It also says it was entirely unaware that Bollen would testify in these proceedings and therefore there is no evidence to find a breach of Section 5(1) of the Code.

60 The Union submits that the purpose of Section 6(1) of the Code is to preserve the basic freedom that employees have under Section 4 to be members of a union and participate in its lawful activities. It says it does not need to show coercion or intimidation. It need only show that the employer's actions have violated the employees' freedom to choose whether to belong to a union or that the employer's actions have interfered in the formation, selection or administration of the union: *Canem Systems Ltd.*, BCLRB No. B473/2001, 76 C.L.R.B.R. (2d) 304.

61 It says the Employer has undermined the Union's exclusive bargaining agency and offered inducements which is a serious contravention of the Code: *Byong Kim Holdings Ltd. (Northwoods Inn),* BCLRB No. B217/2008.

62 The Union says the Employer has undermined the reliability of the representation vote as evidence of the employees' true wishes in the same manner as found by the Board in *G & H Noble Custom Cut Ltd.,* BCLRB No. B21/2008, 153 C.L.R.B.R. (2d) 161. It says it is clear that the October 28 meeting was to encourage decertification. It says increased wages were promised and the Employer said "you don't need a union ...you have a decision to make". The Union says in these circumstances it is clear that there is improper interference.

63 The Union says the Employer sees the collective agreement as a hindrance and wants the Union gone. It relies on Ravanello's email dated November 4, 2010 where he states that the "... collective agreement has proven to be a hindrance to the sustainability and growth of the company...".

64 The Union submits that the evidence of Bollen should be preferred over the evidence of Ravanello. It says Ravanello basically just made a blanket denial of all of the anti-union statements. It says Bollen testified consistently and did not rely on any notes. It says it makes sense that he did not take any notes at the October 28 meeting as he thought it was a meeting about promotions and advertising for the business. He was caught off guard. He did take notes in his truck about an hour and a half later and then later transcribed them onto the notes that were submitted in evidence under cross-examination. It says nothing turns on him adding minor facts later.

65 It says the Board has held that there is no doubt that representations by employers that employees will enjoy improvements to benefits and employment terms should they decertify is a breach of section 6(3)(d): *Certain Employees of Sarak Holdings Ltd.,* BCLRB No. B63/2001.

66 The Union says Ravanello's evidence was not credible as he testified that he had no idea that Bollen would be testifying at the hearing. It submits that it is difficult to believe this when the submissions filed to the Board and reviewed by Ravanello, prior to the hearing, repeatedly referred to Bollen and his observations.

67 The Union says the Handout is an attempt to get rid of the collective agreement and the Union. It submits when all the circumstances are considered, including the fact that the Handout was distributed at a captive audience meeting, it is clear that the Employer is promoting decertification.

68 Concerning the alleged failure to remit union dues, the Union submits that the Board assesses whether the objective effect of the Employer's actions is an interference with the administration of the Union and it is "axiomatic" that the failure to remit dues to the Union has a direct effect on the Union's financial administration: *Helping Hands Agency Ltd.,* BCLRB No. B401/2000, 63 C.L.R.B.R. (2d) 291; *Reynolds Concrete Pumping Ltd.,* BCLRB No. B69/2010, 178 C.L.R.B.R. (2d) 271.

69 Concerning the allegation that the Employer breached Section 6(3)(a), the Union says the Employer has laid off Bollen, or placed him on a forced sick leave, for anti-union reasons. The Union submits that Bollen has never been laid off before during the slow season and the Employer has, in essence, laid him off this year because of his support for the Union and his participation in these proceedings before the Board. It says the Employer has not met its burden of proof by merely proving it had reasonable grounds for its actions as it must also convince the Board either by evidence or necessary inference that it did not also act on anti-union animus: *Crown Zellerbach Canada,* BCLRB No. 10/82; *Rempel Bros. Concrete Ltd.,* BCLRB No. 11/81; *Otto Mobiles Vancouver Ltd.,* BCLRB No. B143/2006.

## IV. ANALYSIS AND DECISION

70 The primary issue before me is whether the Employer improperly interfered with the decertification application contrary to Section 33(6) or with the administration and selection of the Union under Section 6(1).

71 In *Canem Systems,* at para. 46, the Board stated:

> ... A union need not show coercion or intimidation by the employer in order to prove a breach of Section 6(1). What it does need to show is that the employer's actions have violated the employees' freedom to choose whether to belong to a union or to participate in such a way as to interfere in the formation, selection or administration of the union.

72 In *Byong Kim Holdings,* at paras. 12 - 13 the Board found:

> ..., Sections 6(1) and 33(6) prohibit the Employer from extending financial inducements to persuade employees to support decertification.
>
> This type of inducement contravenes Section 6(1) for two basic reasons. First, this conduct directly undermines the Union's exclusive bargaining authority. This amounts to interference with the administration of a trade union within the meaning of Section 6(1) of the Code. This is a serious contravention because the Union's exclusive bargaining agency plays a pivotal role in the statutory scheme.

73 In this case, the Union alleges the Employer violated Sections 6(1) and 33(6) when it made statements to the employees at the October 28 meeting that interfered with the employees' decision making so that the representation vote held on November

20, 2010 would not reflect their true wishes. I must apply an objective test to determine if I accept this assertion.

74 There is no dispute that Ravanello presented the Handout at the October 28 meeting. The Handout sets out the Employer's proposals for changes to the collective agreement. The first change it proposes is to eliminate the Union's role as exclusive bargaining agent for the employees in the bargaining unit. The Employer also seeks the right to "to negotiate with individual employees regarding future opportunities i.e. contracting out or leasing". The Employer also proposes that new employees have the right to decide if they want to join the union or not and whether they want to pay dues or not. The Employer also proposes to remove clauses that use seniority to determine wages or job security and proposes a wage increase by paying commission to junior employees at senior rates after a reduced probation period.

75 Concerning the presentation of the Handout at the October 28 meeting, Ravanello said he wanted to be clear that there were certain things he fundamentally disagreed with and that the Handout was his opening position for collective agreement changes. Ravanello consistently explained that he felt that seniority was breeding hostility between the workers and that a wage progression did not make sense in a commission sales position.

76 Ravanello denies saying anything at the October 28 meeting about employees leasing trucks or contracting out, but agrees that employees have approached him about it and he told them that it falls outside of the collective agreement and there is nothing he can do about it. Ravanello agrees that he addressed the rumours that some employees did not want to pay dues and says he told them they should speak to the Union about it. Ravanello said the collective agreement changes set out in the Handout are a culmination from conversations with employees. He wants to accommodate the workers as much as possible but cannot do anything with the collective agreement.

77 Ravanello is a new owner and has no experience operating a unionized business. There has been a high turnover of employees. Due to the regular downturn of business, three quarters of the employees are laid off in the beginning of each year. This regular lay-off period was approaching at the time of the October 28 meeting. Some of the employees have approached Ravanello with concerns related to union dues, seniority, and the ability to lease vehicles. I accept his evidence that he is motivated to support the employees and make his business a success. I also accept his evidence that the purpose of the meeting was to dispel rumours and address his concerns with the collective agreement.

78 Although I accept Ravanello's evidence that he did not expressly say "you guys don't need a union" or "you guys need to make a decision", I find that this is the message he conveyed to the bargaining unit employees at the October 28 meeting. The foundation of being unionized is the strength of the employees joining together and having one collective voice. The Union's exclusive bargaining agency is critical to maintaining the collective voice of the employees. The Employer's proposal in its Handout is to end this. The Employer proposes to end its agreement to recognize the Union as the sole bargaining agent for the employees in the bargaining unit and it also seeks to allow employees to choose not to be members of the Union and presumably even if they are members, to enter into individual negotiations with the Employer for future opportunities such as leasing a vehicle as a contractor.

79 Ravanello's purpose for providing the document was to explain the ways in which he would be seeking to improve the collective agreement to make it more workable for the Employer going forward. He says he did not intend to promote a decertification by the presentation of the Handout to the employees. However, Bollen understood the proposed changes to the Union security clauses to be the Employer saying "you guys don't need a union" and "you guys need to make a decision". I find this to be a reasonable conclusion based on the substance of the proposed changes to the Union's exclusive bargaining authority.

80 I find that I do not have to prefer the evidence of Bollen over Ravanello to come to this conclusion. I found both Bollen and Ravanello to be credible witnesses. However, I find Bollen is not a reliable witness on all aspects of his testimony. His recollection of the statements made at the October 28 meeting was not entirely consistent and his explanation of the preparation of his notes from the October 28 meeting leads me to conclude that they are not reliable. I also find his testimony that a few employees had the Handout is inconsistent with his facsimile cover sheet that was sent to the Union which stated that the Handout was handed out to all employees but him. However, my finding that Ravanello delivered the message to the employees that they did not need a Union is not dependent on Bollen's recollection of exactly what Ravanello said at the meeting. My finding that Ravanello delivered the message to the employees that they do not need the Union is based on the proposals distributed to the employees in the Handout, and Ravanello's evidence concerning the purposes for the meeting and what he agrees he said at the meeting or to employees prior to the meeting concerning his proposed changes.

81 I also find that Ravanello made inducements to the employees which would persuade them to support decertification. There was no discussion between the Employer and employees about decertification at the October 28 meeting. There is no evidence that the Employer was aware of a decertification campaign until the application for decertification was filed with the Board. When the employees approached Ravanello with concerns about paying union dues or the inability to lease vehicles as a contractor, he told them he could not do anything about their concerns because of the collective agreement and that they should talk to the Union. He then prepared proposals for bargaining which met his concerns about the collective agreement and also, he thought, accommodated the wishes of the employees who approached him. He did not approach the Union to discuss the concerns or to present his proposal. Instead, he met directly with the employees and presented them with the Handout.

82 He specifically invited Bollen to the meeting. However, even on his evidence, he did not clearly tell Bollen that the meeting was to present his proposals for collective bargaining or that he was attending in his capacity as shop steward. I therefore find that this was a meeting between the employees and the bargaining unit employees where the Employer suggested that the Union's exclusive bargaining agency be eliminated and promised a wage increase to the majority of the bargaining unit and an opportunity for employees to negotiate directly with the Employer for changed terms of employment. I find that a reasonable employee would come to the conclusion that the wage increase for junior employees and the opportunity to negotiate directly with the Employer for individual contracts would be achieved by decertification. The Employer's proposed changes concerning increased wages for junior employees and the ability to lease

vehicles, presumably as a dependent contractor, could have been presented to the Union and would then have been the subject of collective bargaining. They were not. Instead, these proposals were presented directly to the employees linked with a proposal to eliminate the Union's exclusive bargaining agency. I find that this amounts to a violation of Sections 6(1) and 33(6) of the Code.

83 The Employer argues that even if I find improper interference, there is evidence that indicates that a representation vote remains an effective means of determining the true wishes of the employees, and thus the Board should impose intermediate remedies short of dismissal of the decertification application: *Granville Island Hotel and Marina Limited, Thompson Interior Savings Credit Union.*

84 Under Section 33(3)(b) there is an automatic time bar preventing another decertification application for ten months following the Board's refusal to cancel the certification under Section 33(6). The purpose of the ten month time bar is to provide a cooling off period and an opportunity for the Union to remedy the effects of the Employer's improper interference or tainting of the decertification application. In cases where the Board has imposed an intermediate remedy, short of dismissal, it has determined that the improper interference can be remedied in a shorter period of time, usually by circulation of the Board's decision and an opportunity for the Union to meet with the employees on paid company time. In this case, the improper interference results from the Employer proposing wage increases for junior employees and opportunities to negotiate individual deals concerning leasing vehicles linked to the elimination of the Union's exclusive bargaining agency. The collective agreement has expired and the Employer and Union are just about to commence collective bargaining. The Employer is in its slow season where historically 75% of the bargaining unit is laid off in reverse order of seniority. In these circumstances, I find that a shorter period of time providing the Union with an opportunity to meet with the employees is insufficient to remedy the effects of the improper interference. If the Employer is correct and its proposals in the Handout are a culmination of the employees' wishes, then this will be the subject of collective bargaining. However, effective bargaining cannot be accomplished with the proposals already presented directly to the employees and a representation vote being rescheduled in the near future presumably, in the midst of bargaining.

85 I find there has been improper interference with the decertification process such that the representation vote will not reflect their true wishes and the only effective remedy is to dismiss the decertification application which will result in an automatic ten month time bar.

86 I turn to the allegation that the Employer has breached the Code by not remitting dues. I accept the Employer's evidence that it has not remitted dues on a monthly basis as it had been told by the previous owner; they could be remitted on a quarterly basis. The Union's documentation recording the payment of dues over the last few years corroborates this understanding. Even though the Union may have attempted to enforce monthly payments with the previous owner, there is nothing to suggest that Ravanello would have known this. The fact that he has regular interaction with Fernandes, who worked with the previous owner, is not sufficient to establish that Ravanello knew of any previous complaints from the Union concerning the fact that dues were not remitted on a regular monthly basis.

87 Concerning the email correspondence between the Union office administrator and Ravanello and Fernandes, it is clear that the Union is now seeking that the dues be remitted monthly. The email correspondence does not persuade me that Ravanello is intentionally delaying or refusing to pay in circumstances that would support a finding of an unfair labour practice. It is clear that Ravanello has questions about the amount owing and is trying to get clarification from the Union. In particular, in his last email on December 7, 2010, Ravanello specifically sets out his understanding and then asked for a revised statement of account for his records from the Union. The Union never responded. In these circumstances, I do not find that the Employer has breached Section 6(1) because it is in arrears for dues remittances. The issue of how much is owed has not been resolved.

88 Similarly, concerning the allegations surrounding the payment of initiation dues, the Union office administrator sent an email to Ravanello on Barton's instructions to clarify the fact that initiation fees could be paid by installments. There is no evidence before me that Ravanello continued to tell employees after this email from the Union that they had to pay initiation fees in full upon commencing employment. I therefore find any statements he made to employees previously were based on his misunderstanding at the time and were not based on an anti-union animus or an attempt to dissuade the employees from paying initiation fees.

89 Concerning the allegation that the Employer refused to post the seniority list, it makes no sense for Fernandes to initially tell Bollen he would post the seniority list, then say "I heard you" and then finally tell Bollen to talk to Ravanello about any Union matters. If it was posted in his office for the past five years, it makes sense that Fernandes would have told Bollen when he first asked that the seniority list was already posted in his office. Fernandes did not testify to dispute these comments nor was Bollen successfully challenged on this point in his evidence. I therefore find, on a balance of probabilities, that the Employer did not post the seniority list as required by the collective agreement. However, I do not find this failure to post the seniority list to be sufficient evidence to establish anti-union animus. Also, the grievance concerning not posting the seniority list was filed on December 20, 2010 which postdates the representation vote by a month.

90 I turn to the allegation that the Employer breached Sections 5(1) and 6(3)(a) and (d) when it ended the accommodation of Bollen and placed him on sick leave. The Employer did not assert that it was impossible to put together a route for Bollen that did not include portables. It said it was becoming increasingly more challenging due to the low call volume. There is a dispute on the evidence concerning how many clients residences or businesses require the use of a portable machine. It is generally in places where the equipment attached to the vehicle would not be able to access the site such as apartments. This will vary from day to day. Although it is clear that there are sufficient clients outside of the slow season to accommodate the creation of a portable free route, I accept the Employer's evidence that it is more challenging due to the low call volume.

91 The question before me is not whether the Employer was within its rights to end the accommodation of Bollen in these circumstances. The question is whether it is a reasonable explanation which is both credible and free from anti-union animus.

92 Although I do find Ravanello's assertion that he had no idea Bollen would be testifying to be suspicious in light of the fact that Bollen is referred to throughout the complaint and submissions, the timing of the decision weighs against this suspicion. The decision to no longer accommodate Bollen was made months after the unfair labour practice complaint was filed. It was also made at the height of the slow season. There is no dispute that there is a significant slowdown in the business at this time of year and in the past, 75% of the bargaining unit has been laid off. With the previous owner, the lay-offs were handled in accordance with the collective agreement and therefore Bollen, as a senior technician, was not laid off despite any possible challenge in meeting its duty to accommodate him. There is also no dispute that Ravanello is attempting to avoid lay-offs. This is seen in his attempt to spread out the work among all the employees during the slow season which resulted in one of the grievances filed by the Union on December 20, 2010.

93 I see the Employer's decision to no longer accommodate Bollen in the same manner as its decision to attempt to spread out the work during the slow season. It may very well be a breach of the collective agreement or a failure to accommodate an employee, but it does not persuade me that the Employer has taken this action in retaliation for participating in union activities or proceedings under the Code before the Board. I also do not find that it was done for anti-union animus.

## V. CONCLUSION

94 I find that the Employer has breached Section 6(1) of the Code and its conduct has amounted to improper interference.

95 Under Section 33(6), I refuse to cancel the certification of the Union without regard to the results of the representation vote.

96 I dismiss the Union's application under Sections 5(1), 6(3)(a) and 6(3)(d) of the Code.

LABOUR RELATIONS BOARD

ALLISON MATACHESKIE
VICE-CHAIR AND REGISTRAR