Canada Industrial Relations Board Conseil canadien des relations industrielles

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Reasons for decision

Teamsters Local Union 938,

applicant,

and

Teamsters Local Union 847,

respondent,

and

Purolator Courier Ltd.,

employer.

Board File: 28662-C
Neutral Citation: 2011 CIRB **601**
July 19, 2011

The panel of the Canada Industrial Relations Board (Board or CIRB) was composed of Mr. Graham J. Clarke, Ms. Judith F. MacPherson, Q.C., and Mr. William G. McMurray, Vice-Chairpersons.

Parties

Ms. Tracey Henry and Mr. Ryan D. White, for the Teamsters Local Union 938;
Mr. Ed Hawrysh, for the Teamsters Local Union 847; and
Ms. Marsha M. Lindsay, for Purolator Courier Ltd.

These reasons for decision were written by Mr. Graham J. Clarke, Vice-Chairperson.

I–Nature of the Application

[1] Section 16.1 of the *Canada Labour Code* (*Part I–Industrial Relations*) (*Code*) provides that the Board may decide any matter before it without holding an oral hearing. Having reviewed all of the material on file, the Board is satisfied that the documentation before it is sufficient for it to determine this application without an oral hearing.

[2] On March 17, 2011, the Board received an application for reconsideration from the Teamsters Local Union 938 (Local 938) for a Board decision in *Purolator Courier Ltd.*, 2011 CIRB LD 2511 (*Purolator 2511*).

[3] Local 938 had originally requested that the Board, pursuant to section 43 of the *Code*, declare it the successor union to Teamsters, Local Union 847 (Local 847) for a bargaining unit at Purolator Courier Ltd. (Purolator). The transfer of jurisdiction had allegedly occurred following the resolution of a jurisdiction dispute between the Locals by the Teamsters' Joint Council.

[4] *Purolator 2511* denied Local 938's successorship application on the basis that no evidence of membership support had been provided in support of the application and the jurisdiction transfer.

[5] Upon considering this application for reconsideration, the Board has been persuaded that it erred in denying Local 938's application related to its successorship rights. Neither Local 847 nor Purolator contested the original application or this reconsideration application. The Board's requirement of membership support in *Purolator 2511* constituted an error of law.

[6] These are the reasons for the Board's decision.

II–Background Facts

[7] On February 23, 2010, the Board certified Local 847 for a 14-person bargaining unit at Purolator (Order no. 9819-U).

[8] That certification led to a dispute between Locals 938 and 847 concerning which of them was entitled to represent those Purolator employees. The matter was pursued to the Teamsters' Joint Council No. 52 which convened a Jurisdictional Dispute Panel.

[9] On November 19, 2010, that panel found in favour of Local 938. The panel directed Local 847 to "turn over the disputed membership to Local 938 effective immediately." Local 847 was also directed to support Local 938's application to this Board to transfer the bargaining rights to Local 938.

[10] On December 22, 2010, Local 938 asked the Board to recognize the transfer of bargaining rights from Local 847. Counsel for Local 938 filed a written submission setting out the facts about the transfer of jurisdiction, and included a copy of the November 19, 2010 panel decision. Local 938's application constituted the only evidence before the Board.

[11] *Purolator 2511* indicated that Local 938's submission had not contained any evidence whether members of the bargaining unit supported the transfer of jurisdiction application or were consulted in any way.

[12] The panel in *Purolator 2511* found that Locals 938 and 847 were separate trade unions. The request for the transfer of bargaining rights arose solely from the decision of the Jurisdictional Dispute Panel.

[13] The panel in *Purolator 2511* found that a transfer of jurisdiction application required evidence of the wishes of bargaining unit employees. The failure to provide any evidence of employee wishes obliged the Board to dismiss the application, as explained at pages 4-5 of its decision:

> The applicant has failed to provide any evidence that the employees affected by the transfer support this application. The Board will not transfer bargaining rights from one union to another simply on demand. Just as the original certification application included evidence that the employees concerned wanted to be represented by Local 847, the Board will normally expect an applicant, seeking to obtain representation rights through an internal transfer between unions, to provide evidence that the employees in question support the transfer. Since no such evidence was provided by the applicant in this case, the application is dismissed.

[14] In sum, *Purolator 2511* found that trade union mergers, amalgamations and transfers of jurisdiction under section 43 of the *Code* are conditional on the support of members of the impacted bargaining unit(s). Since there was no evidence provided for such support, the Board dismissed Local 938's application.

III–Issues

[15] Local 938 requested that the Board reconsider *Purolator 2511* for the following two reasons:

> 12. The Applicant submits that the this decision should be reconsidered pursuant to section 18 for the following reasons:
>
> a. because the panel erred in law and policy by imposing a requirement that the Applicant provide evidence of membership support when requesting to be declared a successor union following the internal transfer of jurisdiction between two locals of the same union.
>
> b. The Panel failed to respect a principle of natural justice by failing to permit the Applicant to make submissions on the issue of whether the wishes of the employees are a proper consideration where the Applicant requests to be declared a successor union following the internal transfer of jurisdiction between two locals of the same union

[sic]

IV–Analysis and Decision

A–The Board's Reconsideration Power

[16] The Board has the power to review its decisions:

> 18. The Board may review, rescind, amend, alter or vary any order or decision made by it, and may rehear any application before making an order in respect of the application.

[17] Section 44 of the *Canada Industrial Relations Board Regulations, 2001* (*Regulations*) sets out the non-exhaustive list of grounds for reconsideration:

> 44. The circumstances under which an application shall be made to the Board exercising its power of reconsideration under section 18 of the Code include the following:
>
> (a) the existence of facts that were not brought to the attention of the Board, that, had they been known before the Board rendered the decision or order under reconsideration, would likely have caused the Board to arrive at a different conclusion;
>
> (b) any error of law or policy that casts serious doubt on the interpretation of the Code by the Board;
>
> (c) a failure of the Board to respect a principle of natural justice; and
>
> (d) a decision made by a Registrar under section 3.

[18] In *Ted Kies*, 2008 CIRB 413 (*Kies 413*) the Board commented on its requirements for the two grounds Local 938 has raised in its application.

[19] For allegations involving an error of law, the Board stated:

> [16] A reconsideration panel may intervene if an error of law or policy occurred in the original decision and that error casts serious doubt on the interpretation of the *Code*.
>
> [17] Section 45 of the *Regulations* requires an applicant to set out, with supporting argument, not only what specific error of law or policy allegedly occurred, but also why the error casts serious doubt on the original panel's interpretation of the *Code*. This two-pronged test demonstrates that an error of law or policy, if one occurred, does not necessarily mean that the original panel's decision will be overturned on reconsideration.
>
> ...
>
> [21] In short, if an applicant alleges an error of law or policy, the application should, at a minimum, identify:
>
> (i) The law or policy in issue;
> (ii) The precise error the original panel made in applying that law or policy; and
> (iii) How that alleged error casts serious doubt on the original panel's interpretation of the *Code*.

[20] For allegations of a denial of natural justice, the Board wrote:

> [22] A reconsideration panel can also consider whether the original panel failed to respect a principle of natural justice.

[23] In *Johanne Lacelle*, 2002 CIRB 166, a reconsideration panel examined the term "natural justice":

> [6] The common-law principle of natural justice consists of two notions: *nemo judex in causa*, which is the right to be judged by an impartial and unbiased decision-maker, and *audi alteram partem*, which is the right to be given adequate notice of the proceedings and the opportunity to be heard. ...

[24] Natural justice is a fluid concept that differs depending on the tribunal in question. For instance, section 16.1 of the *Code* does not require the Board to hold an oral hearing in every case. When the Board chooses not to hold an oral hearing, the right to be heard (*audi alteram partem*) is met through a thorough consideration of the parties' written submissions, responses and replies.

[25] By way of illustration, failure to give notice of a hearing to certain non-parties may constitute a violation of natural justice (see *Raeburn et al.* v. *Canada Labour Relations Board et al.* (1995), 184 N.R. 253 (F.C.A.)). Similarly, bias may exist where a panel member has a membership link with one of the parties in the case (see *IPX Couriers, a division of Dynamex Canada Inc.*, 2001 CIRB 130).

[26] An applicant who alleges the original panel failed to respect a principle of natural justice should set out, at a minimum:

> (i) the particular principle of natural justice or procedural fairness; and
> (ii) a description of how the original panel failed to respect that principle.

[27] A mere disagreement with the original panel's decision and a generic statement that the decision violated some undefined principle of "natural justice" does not justify reconsideration.

[21] Paragraph 12 of Local 938's application, *supra*, clearly described the errors it alleged the Board made in *Purolator 2511*.

B–Did the Board commit an error of law in its interpretation or application of section 43 of the *Code*?

[22] Section 43 of the *Code* deals with trade union successor rights and obligations. We will review each subsection of section 43 in order to determine Parliament's intent. We will also highlight a fundamental difference in the Board's jurisdiction between a trade union successorship and a successorship arising from a sale of business between employers.

(i) Section 43(1)

[23] Section 43 is a deeming provision:

> 43. (1) Where, by reason of a merger or amalgamation of trade unions or a transfer of jurisdiction among trade unions, a trade union succeeds another trade union that, at the time of the merger, amalgamation or transfer of jurisdiction, is a bargaining agent, the successor shall be deemed to have acquired the rights, privileges and duties of its predecessor, whether under a collective agreement or otherwise.
>
> (emphasis added)

[24] A Board decision is not a condition precedent for a trade union successorship to take place. Following a *bona fide* successorship, however, the *Code* then deems that the successor has acquired certain rights, privileges and duties. The Board's role, if any, starts after the successorship and focusses on these "rights, privileges and duties".

[25] Since the Board maintains jurisdiction over the description of the bargaining units it certifies, a trade union, following a successorship under section 43 of the *Code*, may proceed by way of an application under section 18 of the *Code, supra,* to ask the Board to update its bargaining certificate's description.

[26] This was the process followed in *National Bank of Canada, Sillery, Quebec* (1982), 50 di 91; and 2 CLRBR (NS)202 (CLRB no. 391). As demonstrated in that case, however, a debate existed whether a union successorship had ever occurred. If the parties contest the very existence of a successorship, nothing in section 43(1) authorizes the Board to determine which party is correct.

[27] The Board has had several occasions to comment about its role under section 43(1). These comments confirm the Board's jurisdiction under section 43 arises after the union successorship is considered a *fait accompli*.

[28] For example, in *Unitel Communications Inc*. (1991), 86 di 59; 15 CLRBR (2d) 301 (CLRB no. 893) (*Unitel 893*), the Board opined why Parliament expressly did not want it intervening in internal union affairs to determine union successorship questions:

> It seems to us that Parliament intentionally left the matter of mergers, amalgamations and transfers of jurisdiction among trade unions as private contract considerations between the parties involved. These are internal union matters in which the Board cannot and in our respectful opinion ought not to

> interfere. We agree with counsel for CACAW that section 43 as it is presently worded deems that successor rights have been acquired and that the Board's jurisdiction has been restricted to questions about what these rights consist of...
>
> (pages 63-64; 305-306; emphasis added)

[29] In *Bridge Terminal Transport Canada Inc*., 2006 CIRB 347 (*Bridge 347*), the Board confirmed its hands-off approach when considering whether a union successorship had occurred. In that case, the parties contested whether certain votes had resulted in a successorship.

[30] The Board confirmed it did not have the power to determine contested union successorship questions:

> [34] Since the wording of section 43 has not been modified, the Board sees no reason to depart from the interpretation found in *Unitel Communications Inc., supra*. The Board recognizes that there may sometimes be a fine line between declaring that a merger occurred as an accomplished fact and being able to conclude from the facts presented that a merger did occur. However, in the matter under review, it is undeniable that for the Board to grant the order sought by the CAW, it would have to do more than recognize an already accomplished fact. It would have to embark on an enquiry into whether a merger did occur and this would necessarily include the review of the COOWA's constitution and the allegations surrounding Mr. Chand's authority, the adequacy of the notice of meeting, whether the meeting was properly conducted, as well as the possible consequence of Mr. Prasad's participation at the meeting. This, in the Board's view, would go beyond the powers conferred on it under section 43, as it exists.
>
> (emphasis added)

[31] The Board in *Bridge 347* refused to review internal union proceedings, despite being asked to do so by the parties.

[32] In the instant case, Local 938, at paragraph 5 of its application, referred to section 21 of the International Brotherhood of Teamsters' Constitution which established a procedure governing jurisdictional disputes. This issue is clearly an internal union matter.

(ii) Section 43(2)

[33] After a union successorship has occurred, the *Code* then provides a right under section 43(2) for a trade union to apply to the Board to adjudicate ancillary issues which flow from the merger, amalgamation or transfer of jurisdiction:

> 43. (2) Where, on a merger or amalgamation of trade unions or a transfer of jurisdiction among trade unions, any question arises concerning the rights, privileges and duties of a trade union under this Part or under a collective agreement in respect of a bargaining unit or an employee therein, the Board, on application to it by a trade union affected by the merger, amalgamation or transfer of jurisdiction, shall determine what rights, privileges and duties have been acquired or are retained.
>
> (emphasis added)

[34] The wording of this provision confirms that the trade union brings the application to decide these ancillary issues. The Board cannot raise these issues on its own motion.

[35] The text of section 43(2) demonstrates that a trade union does not apply to the Board to request a determination whether a merger, amalgamation or transfer of jurisdiction has taken place. Rather, the trade union's application concerns "... any question [which] arises concerning the rights, privileges and duties of a trade union under this Part ...".

[36] In short, as described by the Board at paragraph 26 in *Bridge 347*, section 43(2) merely "goes on to allow the Board, when an application is made, to determine any questions that arise in respect of what rights, privileges and duties have been acquired or are being retained." The Board looks at post merger, amalgamation or transfer questions only.

(iii) Section 43(3)

[37] Section 43(3) gives the Board the power to conduct an inquiry and/or hold a representation vote. The existence of this power appears to have caused some confusion about the Board's role in a union successorship matter:

> 43. (3) Before determining, pursuant to subsection (2), what rights, privileges and duties of a trade union have been acquired or are retained, the Board may make such inquiry or direct that such representation votes be taken as it considers necessary.
>
> (emphasis added)

[38] Section 43 is not a provision allowing the Board to make any general successorship inquiry it desires. Neither is it a provision allowing the Board to hold representation votes on any matter.

[39] The words "Before determining..." at the start of section 43(3) could perhaps be interpreted broadly to cover the issue of whether any successorship occurred. However, to accept this interpretation, the Board would have to ignore the clear and restrictive reference in section 43(3) to section 43(2).

[40] In other words, section 43(3) of the *Code* gives the Board the power to inquire or hold a representation vote for the exclusive purpose of determining what rights, privileges and duties have been acquired or are retained under section 43(2) of the *Code*. The exclusion in section 43(3) of any reference to section 43(1) means that the Board's power to make an inquiry or hold a vote does not apply to the condition precedent of whether a merger, amalgamation or transfer of jurisdiction took place.

[41] The Board agrees for the most part with this summary from *Unitel 893*, which summarized the limited purpose of section 43(3):

> If Parliament did not intend the Board to meddle in these internal union affairs, why then the Board's powers to make inquiries and to hold votes under section 43(3)? The obvious answer is that the legislators foresaw the need for these tools to ensure smooth transitional periods and continuity of collective agreement administration following mergers, amalgamations or transfers of jurisdiction among trade unions which are purely voluntary affairs. In the normal course of these transactions, trade unions do consult their members and they attempt to anticipate and resolve all of the issues and problems which could arise. However, bona fide questions can arise after the fact about the effect and reach of the merger, for example, which trade union now represents a particular segment of a bargaining unit or if it is appropriate for employees doing certain work to be included in the same bargaining unit with others who do not appear to have the same community of interest.

(pages 64;306)

[42] The Board in *Bridge 347* agreed with the above comment in *Unitel 893*, *supra*, that sections 43(2) and 43(3) provide the mechanism to ensure smooth transitional periods and continuity of collective agreement administration following mergers, amalgamations or transfers of jurisdiction among trade unions:

> [30] The Board also analyzed the reason behind its power to enquire and order representation votes under section 43(3) if the intent of section 43(1) was not meant to have the Board determine whether a merger had occurred or not. The Board determined that sections 43(2) and (3) provide the needed mechanism to ensure smooth transitional periods and continuity of collective agreement administration following mergers, amalgamations or transfers of jurisdictions among trade unions...

[43] The Board agrees with these focussed comments on the intent behind sections 43(2) and (3) of the *Code*.

(iv) Section 46

[44] The Board's power to "decide questions" in successorship situations differs depending on whether a union or employer successorship is in issue.

[45] As described above, section 43(2) sets out the parameters within which the Board can decide questions following a union successorship.

[46] By contrast, Parliament gave the Board a much broader jurisdiction for a sale of a business, including the power, at section 46 of the *Code*, to determine whether a sale even took place:

> 46. The Board shall determine any question that arises under section 44, including a question as to whether or not a business has been sold or there has been a change of activity of a business, or as to the identity of the purchaser of a business.
>
> (emphasis added)

[47] The Board in *Bridge 347*, at paragraph 33, noted this clear distinction depending on the type of successorship:

> [33] It is interesting to note that, in comparison, under the sale of business and change of activities provisions of the *Code*, the Board's power to determine whether a sale took place is clearly stated. Section 46 of the *Code* provides that the Board shall determine any question that arises under section 44, including a question as to whether a business has been sold or a change of activity of a business has occurred, or a question as to the identity of the purchaser of a business. Such is not the case under section 43 of the *Code*.

[48] Some provinces have chosen to give their labour boards a broader jurisdiction to examine trade union mergers, amalgamations or transfers of jurisdiction.

[49] For example, section 37 of the *British Columbia Labour Relations Code (BC Code)*, allows the British Columbia Labour Relations Board (BCLRB) to conduct inquiries into whether a union successorship took place:

> 37. (1) If a trade union claims that because of a merger, amalgamation or a transfer of jurisdiction it is the successor of a trade union that at the time of the merger, amalgamation or transfer of jurisdiction was certified or voluntarily recognized as the bargaining agent for a unit, the board may, in a proceeding before the board or on application by the trade union concerned,
>
> (a) declare that the successor has, or has not, acquired its predecessor's rights, privileges and duties under this Code, or
>
> (b) dismiss the application.
>
> (2) Before issuing a declaration under subsection (1), the board may make the inquiries, require the production of the evidence and hold the votes it considers necessary or advisable.
>
> (3) If the board makes an affirmative declaration under subsection (1), for the purposes of this Code the successor acquires the rights, privileges and duties of its predecessor, whether under a collective agreement or otherwise.
>
> (emphasis added)

[50] Section 37 of the *BC Code*, as this Board noted at paragraph 37 of *Bridge 347*, provides a jurisdiction comparable to that which the CIRB enjoys in sale of business cases:

> [37] The differences between the two sections are obvious. Contrary to the more limited powers under the federal *Code*, a plain reading of the statutory provision of the British Columbia *Labour Relations Code* holds that the BCLRB has the authority to issue a declaration as to whether a successor union has or has not acquired its predecessor's rights, privileges and duties when a union claims it is the successor to a trade union. A comparable power does not exist under the *Code*.

[51] Since Parliament has not provided this same jurisdiction to the CIRB for federal trade union successorships, any reliance on principles from case law emanating from other jurisdictions must always include a clear consideration of the differing statutory provisions.

(v) What is the relevance of employee wishes for a section 43 union successorship?

[52] The panel in *Purolator 2511* referred to both *Unitel 893* and *Bridge 347* in support of considering the wishes of the affected bargaining unit members as a condition precedent for a union successorship.

[53] In *Unitel 893*, the Board stated:

> There is also the question of the wishes of the employees which goes to the underpinnings of the *Code*. As we said, trade unions do normally consult with their members before taking steps to merge with other trade unions or to transfer all or a part of their jurisdiction to another union. As a safeguard to ensure that the fundamental freedom of selecting a trade union of the employees' choice has been respected, the Board requires as a matter of policy that all applications under section 43 of the *Code* are supported by evidence showing that affected members have been consulted and that a majority have expressed approval for representation by the new or merged bargaining agent. Section 43(3) provides a means for the Board to confirm such evidence should the need arise.
>
> (pages 64; 304; emphasis added)

[54] *Purolator 2511* referred to the following paragraph in *Bridge 347* to find that the wishes of the bargaining unit members were essential to the issue of whether a union successorship had occurred:

> [35] The Board does not dispute the contention of the applicant that under a section 43 application, the Board will normally consider whether the membership affected by a merger, amalgamation or transfer of jurisdiction has been given an opportunity to express its wishes and supports the transaction. However, in the present matter, as was the case in *Unitel Communications Inc.*, *supra*, in the absence of a consensus between the parties about the alleged merger, the Board does not proceed to the step of satisfying itself about the employees' wishes.

[55] Both *Unitel 893* and *Bridge 347* seem to suggest that affected union members must "approve" or "support" the transaction.

[56] The Board in *Purolator 2511* echoed the need for employees to "support the transfer", *supra*. To the extent that the choice of the words "support" or "approve" are intended to refer only to the

existence of internal procedures under the trade union's governing Constitution for jurisdiction transfers, then the reconsideration panel can accept these descriptions.

[57] For example, if internal constitutional appeals were ongoing, or the matter was pending before the courts, then the Board, as in *Bridge 347*, might refuse to decide which side was correct in a dispute about the existence of a *bona fide* successorship.

[58] However, if, as in the instant case, there is no evidence contesting a trade union's internal constitutional process, then the Board cannot add, on its own initiative, a requirement that affected members must "approve" or "support" the successorship. To do so would create a member veto over successorships and effectively amend the wording of section 43 of the *Code*.

[59] This reconsideration panel is unable to reconcile, on the one hand, the principle that this Board will not interfere in internal union matters, with, on the other, giving bargaining unit members a veto over any and all trade union mergers, amalgamations and transfers of jurisdiction. With respect, this concurrent application of two fundamentally opposed principles transforms section 43 of the *Code* into a provision comparable to that found at section 37 of the *BC Code*.

[60] That transformation constitutes an error of law that casts serious doubt on the interpretation of the *Code*.

[61] Bargaining unit members may have rights under a union's Constitution and By-laws when transfer of jurisdiction issues arise. Their interests are seemingly represented by one of the bargaining agents in a jurisdictional dispute such as occurred in this case. There may also be internal union appeals available. The civil courts also have jurisdiction to hear applications about alleged procedural irregularities arising from internal union matters: see, for example, *Adi* v. *Datta*, 2011 ONSC 2496. But the *Code* has not given the Board jurisdiction over such internal matters.

[62] To the extent the panel in *Unitel 893* suggested that section 43(3) could be used to verify membership support for a union successorship, we respectfully disagree. Section 43(3) is clearly restricted in scope to ancillary matters following a successorship, rather than to the existence of the successorship itself.

[63] Requiring membership support as a precondition for any trade union successorship turns section 43(3) into a provision comparable to section 46 in our *Code*. Parliament has decided to limit this Board's jurisdiction over a trade union's inner process which results in a union successorship. It is up to Parliament, and not the Board, to determine whether to expand this jurisdiction.

[64] This reconsideration panel similarly disagrees with the panel in *Bridge 347* at paragraph 35, *supra*, to the extent it created a member veto by stating that "the Board will normally consider whether the membership affected by the merger, amalgamation or transfer of jurisdiction has been given an opportunity to express its wishes and supports the transaction". If, however, this statement refers only to evidence a trade union followed its own internal constitutional process, then it is acceptable.

[65] In our view, by imposing a membership support or approval requirement on an uncontested union successorship matter, the Board committed an error of law and gave itself a jurisdiction under section 43 of the *Code* that Parliament had expressly excluded. In the face of uncontested evidence that the Teamsters followed its internal process to sort out a jurisdiction issue between two locals, the Board will respect that process. Bargaining unit members' wishes are irrelevant to the Board's decision.

C–Did the Board commit a denial of natural justice in not asking Local 938 for submissions on the relevance of employee wishes?

[66] The Teamsters raised a second issue concerning an alleged denial of natural justice regarding "...the panel's failure to request submissions from the Applicant on the issue of membership evidence...".

[67] This allegation is now academic given our finding on the relevance of bargaining unit members' wishes in a union successorship situation.

V–Conclusion

[68] The Board grants Local 938's application for reconsideration, rescinds *Purolator 2511* and will amend the bargaining unit's certificate to confirm the transfer of jurisdiction.

[69] It was not contested by any party that a transfer of jurisdiction had taken place between Locals 847 and 938. The two Locals followed a process in their governing Constitution designed to sort out jurisdiction issues. The procedural dispute that existed in *Bridge 347,* and which prevented the Board from knowing if a successorship had occurred, was absent in the instant case.

[70] Following the Teamsters' hearing into the jurisdiction issue, Local 847 was advised it had to transfer its representation rights to Local 938. It was also obliged to do what was necessary so that the transfer would be confirmed by this Board.

[71] Local 847 took no position in the original proceedings or in this reconsideration application.

[72] The Board is therefore satisfied, since it was not contested, that a transfer of jurisdiction has in fact taken place between Locals 938 and 847. This is the type of "private contract" consideration to which *Unitel 893* referred.

[73] Section 43 of the *Code* allows the Board to hold an inquiry and/or representation votes under section 43(3). However, those steps are limited to the ancillary questions as described in section 43(2), and not for the fundamental question of whether a trade union merger, amalgamation or transfer of jurisdiction has taken place.

[74] The latter question is one which the *Code*, unlike in sale of business situations, did not assign to the Board to decide.

[75] The panel is not unmindful, as was mentioned in *Purolator 2511*, that employees have the right to choose their trade union during the certification process. Our interpretation of section 43 does not give a trade union *carte blanche* to ignore the wishes of the members of its bargaining units. Those employees have several avenues to pursue if they are dissatisfied with a successorship situation, including internal union processes and *Code*-based processes such as decertification or supporting a rival trade union.

[76] While bargaining unit members' wishes do not constitute a veto to a section 43 union successorship, clearly a trade union will only ignore such wishes at its peril, given the available recourses for dissatisfied bargaining unit members.

[77] This is a unanimous decision of the Board.

Graham J. Clarke
Vice-Chairperson

Judith F. MacPherson, Q.C.
Vice-Chairperson

William G. McMurray
Vice-Chairperson