Welcome Axis Community Social Services

HISTORY

A reconsideration panel of the Labour Relations Board decided on May 8, 2014 that the voluntary recognition of the Union by Axis was a valid means to obtain a Collective Agreement. *See: BCLRB No. B84.2014.*

Following the reconsideration decision, Local 1611 sought to have the Collective Agreement implemented but this was resisted by the industry bargaining authorities. Local 1611 filed an unfair labour practice application and the Labour Board again confirmed there was a valid Collective Agreement between Axis and Local 1611. *See: BCLRB No.B130.2014.*

Regrettably, the implementation of the Collective Agreement was further delayed by two reconsideration applications (*See BCLRB: B135.2014 and B139.2014*), and a judicial review application in the Supreme Court of B.C., filed by CSSEA (the Employer's bargaining authority).
Both of the reconsideration decisions of the Labour Board upheld the validity of the Collective Agreement and the voluntary recognition process but the exact implementation date of the Collective Agreement remained an outstanding issue.

SETTLEMENT PROCESS

On August 22, 2014, Axis and Local 1611 met at the Labour Board and, with the assistance of a Board mediator, attempted to work toward a settlement of all outstanding legal issues. If no agreement was reached, the Board would have formally decided the implementation date of the Collective Agreement, and the Court would have addressed the judicial review application sometime in November or December. Local 1611 began settlement discussions seeking full retroactive implementation of all terms of the Collective Agreement to May 8, 2013. This would have been the earliest date when the Collective Agreement might have come into force.

In our discussions it became apparent that full retroactivity would cost in excess of $1 million. While the cost of full retroactivity was not of itself a deterrent to Local 1611 it quickly became apparent that the Government would not make any contribution for any past costs. In the Union's view, the Government's intransigence meant that the full cost of any retroactive implementation of the Collective Agreement would be borne directly by Axis. In our view, this may have bankrupted Axis or, at the very least, severely disrupted their operations and your ongoing employment. We found it untenable to commence a bargaining relationship with the threat of litigation which could result in the bankruptcy of the Employer.

A further factor in respect of retroactive implementation was that a substantial portion of the cost related to past pension contributions. While the Government's contribution to the Pension Plan was significant it would have required a **matching contribution** from all employees covered by the Pension Plan. The employee contribution was calculated to be in excess of $3,000 per long service employee. From our discussions, it was determined that this would have been an onerous burden on most employees.

Another major factor taken into consideration was the comments of the Reconsideration Panel in respect of the implementation date. In *B135.2014* paragraph 6, the Panel noted:

> *The date of publication of B84/2014 was May 8, 2014. B84/2014 did not state that its decision would be effective on another date. As a result, the presumptive effective date of B84/2014 under Rule 22(2) of the Board's Rules was May 8, 2014.*

While Local 1611 intended to vigorously contest these obiter comments they nonetheless were indicative of the Board's preferred approach. If these comments were to prevail it would have meant the implementation date of the Collective Agreement would have been May 8, 2014, and possibly later.

All of these factors along with the continuing uncertainty arising from the judicial review process compelled the Union to focus on ensuring all Axis employees would have immediate Union representation and the assured benefits of a Collective Agreement. Ultimately, Local 1611 elected to work cooperatively with Axis to secure a better future rather than focusing on past wrongs. In addition to these considerations, Local 1611 was able to negotiate a modest contribution to address the long delay in the implementation of the Collective Agreement.

THE SETTLEMENT FUNDS

The settlement agreement included a fund which the Union understands is solely contributed to by Axis. This is significant because Axis acted under the direction of its sectoral bargaining authority yet was solely responsible for all costs flowing from CSSEA's denial of the Collective Agreement.

The pro-rata share of the fund was calculated on the following basis:

1. The employee must have worked at least a half month between May of 2013 and September of 2014.
2. The employee must be employed as of the date of settlement (September 13, 2014).
3. If an employee worked more than 15 days in one month the length of service would be rounded up to the next month.
4. The maximum months of service would be 16. This corresponds to the earliest possible date the Collective Agreement could have come into force (May 2013) and when Union benefits might have begun.
5. Once each employee's months of service was determined we took the aggregate of those months for all employees and divided that into the settlement funds to determine an amount per month of service. This amount, multiplied by an employee's months of service gives the total pro-rata share for each employee. From this amount a minimum 10% withholding tax is deducted.

Local 1611 and Axis have begun the substantial work in respect to classifications and implementing the remaining terms of the Collective Agreement. These terms (except Pension) will be retroactive to September 13, 2014. More information on the implementation of the Collective Agreement will be published in the coming weeks.

BCLRB No. B84/2014
(Leave for Reconsideration of BCLRB No. 26/2014)

BRITISH COLUMBIA LABOUR RELATIONS BOARD

AXIS FAMILY RESOURCES LTD.

("Axis")

-and-

COMMUNITY SOCIAL SERVICES EMPLOYERS' ASSOCIATION OF BRITISH COLUMBIA

("CSSEA")

-and-

COMMUNITY SOCIAL SERVICES BARGAINING ASSOCIATION OF UNIONS

("CSSBA")

-and-

CONSTRUCTION AND SPECIALIZED WORKERS' UNION LOCAL 1611

("Local 1611")

PANEL:	Brent Mullin, Chair Bruce R. Wilkins, Associate Chair, Adjudication Leah Terai, Vice-Chair
APPEARANCES:	Lindsie M. Thomson, for Axis Jessica Gregory, for CSSEA Tina-Marie Bradford, for CSSBA Kevin Blakely, for Local 1611
CASE NOS.:	66612 and 66613
DATE OF DECISION:	May 8, 2014

DECISION OF THE BOARD

1 Local 1611 applies under Section 141 of the *Labour Relations Code* (the "Code") for leave and reconsideration of BCLRB No. B26/2014 (the "Original Decision"). The Original Decision granted the declaration sought by CSSEA and CSSBA (the "Joint Applicants") that the voluntary recognition agreement between Axis and Local 1611 does not constitute a valid collective agreement under the Code. Consistent with that determination, the Original Decision dismissed Local 1611's application for declarations in respect to the validity of its voluntary recognition agreement with Axis.

2 Local 1611 also seeks leave and reconsideration of BCLRB No. B30/2014 ("B30/2014"). Given the determination in the Original Decision, B30/2014 dismissed Local 1611's application under Section 99 of the Code in respect to a "bottom line" arbitration award. The award had allowed a preliminary objection to proceeding with Local 1611's grievance in respect to its voluntary recognition agreement with Axis. As explained in B30/2014 (para. 3), Local 1611 had conceded that if the declaration sought by the Joint Applicants was granted, its Section 99 application would be moot. B30/2014 accepted that position and, given the determination in the Original Decision, dismissed Local 1611's Section 99 application on that basis.

3 The focus in the submissions before us is the determination in the Original Decision that the voluntary recognition agreement between Axis and Local 1611 does not constitute a valid collective agreement under the Code. The background to the issue is succinctly set forth as follows in the Original Decision:

> Local 1611 is a member of CSSBA. Axis is a member of CSSEA. On December 5, 2012, Local 1611 and Axis entered into a voluntary recognition agreement whereby they agreed to be bound by the collective agreement between CSSBA and CSSEA. The agreement was ratified by a mail ballot vote of the employees on January 8, 2013.
>
> Axis submits that it expected Local 1611 to subsequently apply to the Board to be certified to represent the employees in question. Local 1611 submits Axis never communicated this expectation to it at the relevant time, and in any case it takes the view that certification is not required in light of the ratified voluntary recognition agreement. Local 1611 expected that Axis would implement the applicable CSSBA-CSSEA Collective Agreement (the "Collective Agreement") four months after the date of ratification, on May 8, 2013. However, in April 2013, Axis advised Local 1611 that it would not be implementing the Collective Agreement due to the failure to apply for certification. Local 1611 grieved Axis' failure to implement the agreement.

> The Joint Applicants sought and received standing to intervene in the grievance hearing. They raised a preliminary jurisdictional objection, arguing to the arbitrator that he should await the outcome of their joint application to the Board regarding the validity of the voluntary recognition agreement between Local 1611 and Axis. The arbitrator has apparently decided to await this decision. (paras. 3-5)

4 The legal context is set forth as follows in the Original Decision:

> Outside the context of the *CSLRA*, [the *Community Services Labour Relations Act,* S.B.C. 2003, c. 27] it is well accepted that employees can become represented by a union by way of a voluntary recognition agreement. The Joint Applicants assert, however, that the *CSLRA* precludes employees subject to its provisions from becoming represented by a union other than by way of a successful certification or variance application. Alternatively, they submit Local 1611 cannot require that the Collective Agreement be implemented without obtaining certification to represent the employees in question.
>
> There is nothing on the face of the *CSLRA* which expressly precludes the acquisition of representation rights by way of voluntary recognition agreement, or which expressly states that such rights must be acquired by way of either certification or variance. Section 4(1) of the *CSLRA* does state that a trade union "*certified* to represent the employees of an agency included in a bargaining unit established under section 3 must belong to a single association of unions composed of all trade unions representing employees in all bargaining units established under section 3" (emphasis added). Thus, the *CSLRA* clearly contemplates unions acquiring representation rights by way of certification. The Joint Applicants submit that, when the statutory scheme is properly understood, the acquisition of such rights by way of voluntary recognition agreement is not contemplated and indeed would be inconsistent with the purpose and intent of the legislation. (paras. 30-31)

5 The effect of the *CSLRA* on labour relations in the community social services sector is noted in paragraph 32 of the Original Decision (quoting from *Community Social Services Employers' Association*, BCLRB No. B38/2004):

> The previous structure in the sector had CSSEA as an accredited bargaining agent bargaining on behalf of some of its members, negotiating individual collective agreements with various trade unions.
>
> The Act [the *CSLRA*] changed the structure in the sector in several ways. CSSEA is now the accredited bargaining agent for all its unionized members. CSSEA has the exclusive authority to bargain collectively on behalf of those member agencies.

> Section 3 of the Act states that "for the purpose of collective bargaining between CSSEA and the association of unions representing employees of agencies", three bargaining units would be established. The result is that for *collective bargaining purposes*, rather than have the sector involved in approximately 250 sets of collective agreement negotiations as was the case previously, there is now three sets of negotiations. (paras. 32-34, emphasis in original)

The *CSLRA* further required the unions representing employees in these bargaining units to belong to an association of unions, which ultimately became the CSSBA. As noted in the Original Decision, clearly "a significant purpose and intent of the *CSLRA* was to rationalize the bargaining structure in the community social services sector ..." (para. 34).

6 The parties' positions before the original panel are helpful in approaching the issue in the Original Decision. While there are a number of further, particular arguments put forward, the core of the Joint Applicants' position is:

> ... that neither Axis nor Local 1611 had the actual or apparent authority to enter into a collective agreement because neither was the accredited bargaining agent as defined by the statute. They submit that the unit created by their voluntary recognition agreement violates the *CSLRA* by attempting to create an additional bargaining unit and bargaining agents outside the statutory framework. They further submit that Local 1611 did not fulfil conditions necessary to bring the voluntary recognition agreement into effect (successful application for certification or variance) [further to Memorandum of Agreement #3, between CSSEA and CSSBA: see para. 9 of the Original Decision]. (Original Decision, para. 10)

7 For its part, among other points,

> Local 1611 disputes the Joint Applicants' characterization that its voluntary recognition agreement with Axis creates a separate bargaining unit of employees outside the statutory regime established by the *CSLRA*. It submits that no separate bargaining unit is created as a result of Local 1611 acquiring the right to represent the employees of Axis through a ratified voluntary recognition agreement. Rather, the employees fall within the appropriate statutory bargaining unit and Local 1611 must become a member of CSSBA (which it is). (para. 17)

8 For completeness, we note that Axis did not take a position before the original panel on the issue of the validity of the voluntary recognition agreement between itself and Local 1611: Original Decision, para. 29.

9 As set out above, the Original Decision concluded that the voluntary recognition agreement between Local 1611 and Axis did not constitute a valid collective agreement

under the Code. As we will address the reasoning in the Original Decision in some detail in our analysis below, we will not summarize it at this point in our decision.

10 In seeking leave and reconsideration of the Original Decision, Local 1611 primarily raises natural justice concerns in respect to arguments it submits were not considered and matters it says were not resolved in the Original Decision. The arguments are opposed by the Joint Applicants, with Axis making a submission consistent with the limited position it took before the original panel.

11 In paragraphs 21 through 37 of its leave and reconsideration application, Local 1611 also puts forward a substantive submission in respect to the interpretation and application of the *CSLRA* in the Original Decision. In response, CSSBA submits:

> These submissions have not been requested by the Board and new submissions are not typically permitted as part of a Section 141 application. As such, the CSSBA will not be responding to Local 1611's submissions on Section 4 [of the *CSLRA*] until the Reconsideration Panel has decided to refer the matter back to the Original Panel for submissions or requests submissions from the CSSBA and CSSEA on this issue.

12 CSSEA says that CSSBA represents Local 1611 and "Local 1611 cannot now advance a new argument - against its own bargaining agent - seeking ostensibly to challenge the Original Panel's analysis of the word "certified" in the *CSLRA*; especially when the two sole bargaining agents do not dispute the Board's conclusion." As well, CSSEA says that the focus on the word "certified" in the *CSLRA* is "simply a red herring", with the path to obtaining bargaining agency in the social services sector having been outlined by the Board in *Centaine Support Services Inc.*, BCLRB No. B188/2008, para. 38 (Upheld on Reconsideration in BCLRB No. B196/2008).

13 An application under Section 141 must meet the Board's established test before leave for reconsideration will be granted. An applicant must establish a good, arguable case of sufficient merit that may succeed on one of the established grounds for reconsideration: *Brinco Coal Mining Corporation*, BCLRB No. B74/93 (Leave for Reconsideration of BCLRB No. B6/93), 20 C.L.R.B.R. (2d) 44.

14 We have reviewed and considered the submissions of the parties. Having done so, we find the core and substance of the matter before us is whether the *CSLRA* prohibits the obtaining of representation rights under the Code through voluntary recognition and, if not, whether the Board should allow and recognize the voluntary recognition agreement between Local 1611 and Axis in the circumstances of this case.

15 In approaching these questions, we agree with the submission of Local 1611, relying on *Napier Intermediate Care Home Ltd.*, BCLRB Letter Decision No. B361/97 (Leave for Reconsideration of BCLRB Nos. B86/97 and B88/97), that the CSSBA refused to address the interpretation and application of the *CSLRA* at its own risk: see also *CUPE*, BCLRB No. B114/2006 (Leave for Reconsideration of BCLRB No. B18/2006); *Communications, Energy & Paperworkers' Union, Local 470*, BCLRB No. B156/2007

(Leave for Reconsideration of BCLRB No. B71/2007) ("*CEP Local 470*"); *Ledcor Resources & Transportation Limited Partnership (Cant Mill Operation - Chilliwack)*, BCLRB No. B171/2013 (Leave for Reconsideration of BCLRB No. B124/2013); and *North Peace Cultural Society*, BCLRB No B87/2013 (Leave for Reconsideration of BCLRB No. B46/2013).

16 We also do not accept CSSEA's submission that Local 1611 is prohibited from raising the points in its leave and reconsideration application without the approval of CSSEA. As Local 1611 notes, all unions seeking to represent employees in the community social services sector do so in their own name, not through the CSSBA. In the certification context, for instance, it is only when that union is certified that it then falls within the representation by the CSSBA under the *CSLRA*. The question here is whether that same process and ultimate structure can be reached through voluntary recognition between the initial union and an employer in the sector. In this case the initial union is Local 1611 and the employer is Axis.

17 We also do not find that the Board's decisions in *Centaine Support Services* are determinative of that issue. The passage in paragraph 38 of the original *Centaine Support Services* decision is merely descriptive of the basic process and structure arising under the *CSLRA*. It does not address or purport to answer the particular issue here, which is whether that process and ultimate structure can also be pursued through voluntary recognition under the Code.

18 Turning thus to the merits of the matter before us, we will start with the nature and practice of voluntary recognition under the Code. The Board's leading decision in that regard is that of then Vice-Chair Munroe and panel in *Delta Hospital*, BCLRB No. 76/77, [1978] 1 Can L.RBR 356. The Board in that decision commences its analysis as follows:

> We can begin with this passage from Laskin, C.J.'s judgement in *Terra Nova Motor Inn* (1974) 74 C.L.L.C. 14,253:
>
> > ... It is notorious that long before labour relations legislation was enacted in British Columbia, compelling employers to bargain collectively with trade-unions which obtained certification thereunder as bargaining agents for employees for those employers, there were collective bargaining relations between employers and trade-unions which were the product of voluntary recognition of such trade-unions by employers. The introduction of compulsory collective bargaining legislation did not exclude voluntary recognition and consequent voluntary bargaining . . .
>
> While there is nothing in the Code which expressly provides that a trade-union may be voluntarily recognized by an employer or that such recognition has all or some of the consequences of a certificate of bargaining authority, nor are there any provisions

> which expressly outlaw those notions. And there are several sections in the Code which impliedly recognize and give sanction to the industrial relations fact of voluntary recognition. (p. 366)

The passage goes on to refer to specific sections in the Code supporting the implied acknowledgement of voluntary recognition.

19 The panel in *Delta Hospital* goes on to explain how a union can establish that it does truly represent the employees in a voluntary recognition situation. Ratification of a collective agreement agreed to between the union and the employer, as here, is one of the mechanisms. The panel concludes its analysis of voluntary recognition in respect to the Code by noting that what it has set out provides "an appropriate balance between the formal certification process and the less formal, and often more expedient, voluntary recognition system." (p. 371)

20 Local 1611 and Axis have followed "the less formal, and often more expedient, voluntary recognition system" in the present case. Clearly that approach has long been well accepted under the Code in general. The question in the present case is whether it is consistent with the requirements of the *CSLRA*.

21 Local 1611 submits that its voluntary recognition agreement with Axis is not inconsistent with the *CSLRA*, which does not preclude proceeding in this fashion. That position was set out in some detail in paragraph 36 of the Original Decision:

> Local 1611 submits that its voluntary recognition agreement with Axis is not inconsistent with the *CSLRA* because it did not create a separate bargaining unit and bargaining relationship outside the scope of the statutory bargaining structure created by the legislation. Rather, Local 1611 submits, when the employees in question ratified the voluntary recognition agreement on January 8, 2013, they became "represented by a trade union" (Local 1611) within the meaning of Section 2(1) of the *CSLRA*. Accordingly, at that moment, CSSBA became their exclusive bargaining agent (with Local 1611 as a member) and CSSEA became Axis' bargaining agent with respect to these employees. Local 1611 submits that none of this is precluded by the *CSLRA* or inconsistent with it. Voluntary recognition agreement is merely one method by which a union can acquire representation rights, triggering the provisions of the *CSLRA*, just as it is one method by which unions can acquire representation generally under the Code.

22 The position taken by Local 1611 regarding the *CSLRA* is similar to what the Board had found in *Delta Hospital* in respect to voluntary recognition and the provisions of the Code. It will be recalled that the Board found there that while there are no express provisions in the Code regarding voluntary recognition agreements, nor are there any provisions expressly prohibiting voluntary recognition agreements. Within the context and history of labour relations in British Columbia, referenced in the quote from Laskin, C.J., the Board went on to approve the validity of voluntary recognition agreements under the Code.

23 Like the Code, there are no provisions in the *CSLRA* which expressly prohibit voluntary recognition agreements. That was noted in para. 31 of the Original Decision (see para. 4 above). In contrast to the Original Decision, however, we also find that the *CSLRA* does not impliedly preclude voluntary recognition between a union and an employer as a means of the union gaining representation rights in the community social services sector.

24 In that regard, we note and agree with Local 1611's submission that "all unions seeking to represent employees in the Social Services Sector do so in the union's own name and the CSLRA has no role whatsoever in organizing any units". Organizing employees, and thus coming to represent them, is left to the unions in the industry, who then, under the *CSLRA*, become part of the authorized bargaining agent, the CSSBA. The provisions and structure of the *CSLRA* do not provide or imply that the CSSBA will be the party organizing unrepresented employees, nor is that the practice in reality on the ground.

25 We also find that the provisions of the *CSLRA* do not expressly or impliedly address the question of how individual unions must organize employees in order to come to represent them and then fall within the bargaining authority within the CSSBA. Like the Code, as explained in *Delta Hospital*, the *CSLRA* came into being within a labour relations and legal context which had long acknowledged the use of voluntary recognition as a means by which unions could come to represent employees. In that context, the *CSLRA* at one point refers to a "certified" trade union (subsection 4(1)), but at all other times refers to the more generic concept of the employees being represented by a trade union and thus ultimately falling within the bargaining units established under Section 3 of the *CSLRA*: subsections 2(1), 5(1), and 7(3).

26 The reference to a "certified" trade union in subsection 4(1) is also in effect encapsulated, or becomes a subset of, those employers "whose employees are represented by a trade union" and thus under subsection 2(1) of the *CSLRA* have CSSEA as their bargaining agent. The broader, more generic language of employers being represented by a trade union is thus used in describing the constituency of CSSEA, the employers' bargaining agent.

27 The broader wording in subsections 2(1), 5(1), and 7(3), in referring to employees represented by a trade union, on its face allows for that representation to be gained through voluntary recognition. As well, that language in the *CSLRA* was chosen within the established labour relations context in which voluntary recognition had long been accepted and acknowledged by the Board under the Code.

28 Lastly, the *CSLRA* notes that the Code and its regulations only do not apply "if there is a conflict or inconsistency between this *Act* and those enactments": subsection 8(1). The determination of whether there is "a conflict or inconsistency" is to be made by the Board: subsection 8(2). Clearly it was thus contemplated that the Board would bring its expertise and approach in respect to the Code to this task of interpreting and applying the *CSLRA*. That approach would include the Board bringing to the task its longstanding acceptance of voluntary recognition as a means by which unions can

come to represent employees. As a result, read as a whole and in the context in which it was passed, the *CSLRA* does not create a "conflict or inconsistency" with the Code in respect to individual unions, such as Local 1611, coming to represent by way of voluntary recognition the employees of an employer in the community social services sector.

29 The effect of the *CSLRA* of course also means, however, as Local 1611 acknowledges, that the only collective agreement which can be agreed to between an individual union and an employer in the community social services sector is the collective agreement between CSSEA and CSSBA.

30 However, that does not mean that an individual union and an employer, as here, cannot agree to be bound by that collective agreement as a part of the voluntary recognition of the union by the employer. As noted above, it is individual unions, not the CSSBA, who organize employees. The "exclusive bargaining agency bestowed on CSSBA by the *CSLRA*" (Original Decision, para. 37) speaks to collective bargaining, not the organizing of the employees.

31 By agreeing to the collective agreement between CSSEA and the CSSBA, Local 1611 and Axis complied with the bargaining structure and requirements of the *CSLRA*, while adopting the established, and not prohibited, method of the employer recognizing the union's representation of the employees through voluntary recognition.

32 We thus do not agree with the analysis and conclusion in paragraph 37 of the Original Decision, as it does not reflect this distinction between what is covered by the *CSLRA* (collective bargaining in the community social services sector) and what is not covered by the *CSLRA* (how individual unions can come to represent employees within the community social services sector).

33 We also confirm and emphasize that what we are dealing with in the present case is an individual union and an employer agreeing to exactly the collective agreement which CSSEA and the CSSBA have negotiated under the *CSLRA*. We are not addressing the circumstance posited in paragraph 38 of the Original Decision in which the voluntary recognition parties may have agreed to a collective agreement which is not that agreed to by CSSEA and the CSSBA. That circumstance is not the present case and is in no way validated by what we have to say here. We are thereby also not persuaded by either paragraphs 38 or 39 of the Original Decision.

34 Given the restricted nature of what the voluntary recognition parties can agree to, we further do not accept the proliferation fear in paragraph 44 of the Original Decision.

35 To be clear, our decision here only supports the facts in the present matter, in which an individual union, Local 1611, and an employer in the community social services sector, Axis, have agreed to be bound by the CSSEA-CSSBA collective agreement. As such, there is no support within our decision for any deviations by the voluntarily recognizing parties from that collective agreement. That should greatly limit the kind of practical difficulties noted in paragraph 45 of the Original Decision.

36 Lastly, we do not accept that CSSEA and the CSSBA through their agreement in the form of Memorandum of Agreement #3 could limit the voluntary recognition rights of Local 1611 or Axis under the Code. Put shortly, CSSEA and the CSSBA cannot take away through their agreement the Code rights of other parties if, in fact, that was their intent.

37 In the result, we find that there is no convincing reason or argument which has been raised to prohibit Local 1611 and Axis from reaching the voluntary recognition agreement they did in the present matter. As well, given the history, context, and sound labour relations reasons supporting voluntary recognition under the Code, as set out in *Delta Hospital*, we find the voluntary recognition agreement of Local 1611 and Axis in the present matter, reflecting as it does exactly the community social services sector collective agreement between CSSEA and the CSSBA, should be accepted.

38 Consequently, we find the Original Decision must be overturned. The declaration sought in the original proceedings by the Joint Applicants is dismissed and the voluntary recognition agreement between Local 1611 and Axis is confirmed as a valid collective agreement.

39 Given this determination in respect to the Original Decision, the matter in B30/2014 is remitted to the original panel.

LABOUR RELATIONS BOARD

"BRENT MULLIN"

BRENT MULLIN
CHAIR

"BRUCE WILKINS"

BRUCE WILKINS
ASSOCIATE CHAIR, ADJUDICATION

"LEAH TERAI"

LEAH TERAI
VICE-CHAIR

BRITISH COLUMBIA LABOUR RELATIONS BOARD

AXIS FAMILY RESOURCES LTD.

("Axis")

-and-

COMMUNITY SOCIAL SERVICES EMPLOYERS' ASSOCIATION
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CONSTRUCTION AND SPECIALIZED WORKERS' UNION
LOCAL 1611

("Local 1611")

PANEL:	Elena Miller, Vice-Chair
APPEARANCES:	Lindsie M. Thomson, for Axis Jessica Gregory, for CSSEA Tina-Marie Bradford, for CSSBA Kevin Blakely, for Local 1611
CASE NO.:	67258
DATE OF DECISION:	July 8, 2014

DECISION OF THE BOARD

I. NATURE OF APPLICATION

1 Local 1611 applies under Sections 6(1), 6(3)(d) and 49(1) of the *Labour Relations Code* (the "Code"), alleging Axis and CSSEA have committed unfair labour practices by refusing to implement any term of a collective agreement that Local 1611 asserts is in effect between itself and Axis. Axis and CSSEA dispute that a collective agreement is in effect and that they have committed unfair labour practices. CSSBA seeks standing to make submissions congruent with those of Axis and CSSEA. I have reviewed the written submissions and I am able to make a decision on the basis of those submissions and the materials attached to them.

II. BACKGROUND

2 On February 11, 2014, as an original panel of the Board, I granted a joint application by CSSEA and CSSBA for a declaration under Section 139 of the Code that the voluntary recognition agreement between Axis and Local 1611 does not constitute a valid collective agreement and is therefore of no legal force and effect: *Axis Family Resources Ltd.*, BCLRB No. B26/2014, 239 C.L.R.B.R. (2d) 97 (the "Original Decision"). A day later, in *Axis Family Resources Ltd.*, BCLRB No. B30/2014 ("B30/2014"), I dismissed Local 1611's application under Section 99 of the Code for review of a December 2, 2013 award by Arbitrator Wayne Moore (the "Arbitrator"), on the basis that the declaration I granted in the Original Decision rendered the Section 99 application moot.

3 Local 1611 sought leave and reconsideration of the Original Decision under Section 141 of the Code, and on May 8, 2014, a reconsideration panel of the Board granted the application, overturning the Original Decision: *Axis Family Resources Ltd.*, BCLRB No. B84/2014 (Leave for Reconsideration of BCLRB No. B26/2014) (the "Reconsideration Decision"). The Reconsideration Decision found "the voluntary recognition agreement between Local 1611 and Axis is confirmed as a valid collective agreement" (para. 38). It also remitted the matter in B30/2014.

4 Local 1611 wrote to CSSEA on May 9, 2014, the day after the Reconsideration Decision was issued. It took the position that the voluntary recognition agreement between Local 1611 and Axis should be implemented retroactive to May 8, 2013. It also asked CSSEA to notify Axis that Local 1611 required a complete employee list with contact information, work locations and seniority dates.

5 On May 16, 2014, CSSEA responded:

> We have, for response, your letter of May 9, 2014 requesting a list of employees with personal information such as contact information.

> As you are aware, this is a complex request in light of the current situation and existing legislation. Therefore, we will consider your request and respond in due course.

6 Local 1611 responded by email the same day, stating that it did not agree its request was "complex", and that it had made "a straight forward request in light of the Reconsideration decision in B84/2014 and Article 8.4 of the Collective Agreement". It added:

> Your suggestion that CSSEA will respond "in due course" is not satisfactory and not in accordance with the requirements of the Collective Agreement. Local 1611 demands a meeting to discuss the apparent refusal to provide this basic information as contemplated in Article 9.13 of the Collective Agreement. Alternatively, CSSEA might simply agree that "no satisfactory agreement" will be reached at such a meeting and we will then proceed directly with the appointment of an arbitrator.
>
> May I please have your timely response to this request.

7 No further contact between CSSEA and Local 1611 took place before Local 1611 filed this unfair labour practice complaint on May 23, 2014 (the "Complaint"), which was assigned to me and on which the parties have provided full submissions.

8 In a telephone conference call I held with the parties on June 2, 2014, Local 1611 advised that, in light of the Reconsideration Decision, it no longer sought a decision on its Section 99 application (the matter in B30/2014 remitted to me by the reconsideration panel). No party opposed Local 1611's position on that remitted matter, and accordingly I dismissed the Section 99 application as moot. Thus, the only matter to be decided is the Complaint.

III. POSITIONS OF THE PARTIES

LOCAL 1611

9 Local 1611 submits the Reconsideration Decision unequivocally concludes that the voluntary recognition agreement between Local 1611 and Axis is a valid collective agreement (the "Collective Agreement"), yet CSSEA and Axis have refused to implement the Collective Agreement, thereby interfering with the administration of a trade union contrary to Section 6(1) of the Code. Local 1611 submits CSSEA and Axis are also in breach of Section 49 of the Code, which requires that a person bound by a collective agreement do everything they are required to do by the provisions of the collective agreement.

10 Local 1611 submits the Board has long held that an employer may not refuse to pay union dues or provide a seniority list to the union, and that the failure to do so constitutes interference with the administration of a trade union contrary to Section 6(1) of the Code: *Checkmate Cabs Ltd.*, BCLRB No. B144/98 at para. 30; *Woodland West Lumber Company Ltd.*, BCLRB No. B122/2007 at paras. 9-16; *Helping Hands Agency*

Ltd., BCLRB No. B401/2000, 63 C.L.R.B.R. (2d) 291 at paras. 83-84. Local 1611 submits that in this case Axis and CSSEA's refusal to implement any of the terms of the Collective Agreement stands as an even greater undermining of its administration, contrary to Section 6(1).

11 Local 1611 submits that, although it offered to set any potential disputes over the implementation of the Collective Agreement down for arbitration, it is not obligated to do so. It submits the failure of Axis and CSSEA to implement the Collective Agreement is not in dispute, and it would be "pointless as well as untimely and costly to pursue such an egregious breach with an arbitrator". Instead, it seeks declarations and orders from the Board, including an order that Axis immediately provide Local 1611 with a complete seniority list including contact information for all employees employed between May 8, 2013 and the present; an order that Axis immediately implement all of the current monetary provisions of the Collective Agreement; and an order that Axis meet with Local 1611 to implement all of the remaining terms of the Collective Agreement within 30 days of the order unless otherwise mutually agreed.

AXIS

12 Axis submits, by way of background, that it is a social services employer with operations across British Columbia providing a wide range of specialized services to children, youth, families, and individual adults. It currently employs approximately 330 non-manager employees, 20-25 of whom are represented by the B.C. Government and Service Employees' Union ("BCGEU"). In December 2012, Axis employed 248 non-managers (excluding the BCGEU employees).

13 On December 5, 2012, Axis and Local 1611 signed an agreement which stated:

> The Employer and Union agree to be bound by all of the terms of the Collective Agreement between Community Social Services Employers' Association and Community Social Services Bargaining Association of Unions dated April 1, 2010 to March 2012 as modified or renegotiated from time to time.

14 In a letter dated May 1, 2013 to Axis, Local 1611 stated that it had carried out a ratification process, that the ratification vote was counted on January 8, 2013, and that an overwhelming majority of those who voted were in favour of ratifying the Collective Agreement. Local 1611 further stated that at the time of negotiating the Collective Agreement, it had been agreed the Collective Agreement would be implemented four months after it had been ratified. Accordingly, Local 1611 took the position the Collective Agreement should be implemented on May 8, 2013. It submitted that this was unaffected by the Memorandum of Agreement #3 appended to the 2010-2012 Community Collective Agreement ("MOA #3"), and it advised that failure to implement the terms of the Collective Agreement on May 8, 2013 would result in Local 1611 filing a grievance.

15 Axis did not implement the Collective Agreement on May 8, 2013, and on June 11, 2013, Local 1611 wrote to Axis to advise that a grievance would be referred to arbitration under the Collective Agreement.

16 On June 14, 2013, CSSEA wrote to Local 1611 regarding the grievance. CSSEA took the position that, in light of MOA #3, Local 1611 had to apply for certification to represent the employees of Axis. Local 1611 did not agree.

17 The Arbitrator was appointed to hear Local 1611's grievance of Axis' refusal to implement the Collective Agreement, and a hearing was scheduled for December 3, 2013. CSSEA and CSSBA applied for standing before the Arbitrator to argue that he was without jurisdiction to hear the grievance because there was not a valid collective agreement between Axis and Local 1611. CSSEA and CSSBA further took the position that the validity of the agreement should be decided by the Board.

18 On December 2, 2013, the Arbitrator rendered a "near bottom line" decision that the validity of the collective agreement should be determined by the Board. He therefore cancelled the December 3, 2013 hearing date.

19 Axis acknowledges that the Reconsideration Decision states "the voluntary recognition agreement between Local 1611 and Axis is confirmed as a valid collective agreement" (para. 38), and that the reconsideration panel did not remit the matter to the Arbitrator to determine remaining issues. Nonetheless, Axis submits the reconsideration panel did not determine the following matters, which it submits remain outstanding:

a. the scope of the parties' voluntary recognition agreement,

b. the date on which the voluntary recognition applies,

c. whether notwithstanding a voluntary recognition, MOA #3 still requires either a certification or variance in as a pre-condition to the implementation of the Collective Agreement,

d. the impact of MOA #3 generally on the timing of the implementation of various types of terms of the collective agreement.

20 With respect to whether it has committed an unfair labour practice in refusing to implement the Collective Agreement, Axis submits that issue must be decided contextually. Here, Axis submits, the context is that it invited Local 1611 to organize its employees and "facilitated" this for Local 1611. Axis and Local 1611 signed the December 5, 2012 agreement, which Local 1611 asserted was a voluntary recognition agreement. Local 1611 refused to seek certification, giving rise to objections from CSSEA and CSSBA. CSSEA and CSSBA obtained a ruling from the Arbitrator that the Board should decide the validity of the agreement, which the Board did. However, Axis submits, the Board did not issue a declaration sought by Local 1611 in its submissions to the Board, that the Collective Agreement was in force as of May 8, 2013.

21 Axis submits the Board also "declined to issue a ruling on the interpretation and application of MOA #3, except to say that the terms of the Collective Agreement could not impact the question of whether the *CSLRA* [the *Community Services Labour Relations Act*, S.B.C. 2003, c. 27] made room for voluntary recognition agreements". Axis submits that therefore there are "a number of issues which remain outstanding and which are part of the context within which the Board must consider Axis' conduct".

22 For example, Axis submits, there is nothing in the Reconsideration Decision which establishes the scope of the voluntary recognition agreement and, as Axis' operation has expanded since January 2013, Axis submits there is a "lack of clarity concerning who is covered by the Collective Agreement". It further submits that, as the Reconsideration Decision does not address the date on which the voluntary recognition agreement should come into force, "it is not possible to determine whether Axis is in violation of the Collective Agreement terms concerning implementation (found in MOA #3)". Axis further submits:

> The Reconsideration Decision does not address the interpretation and application of MOA #3 once a voluntary recognition agreement is found. It is possible that the proper interpretation of MOA #3 is that once a voluntary recognition agreement is entered into, the parties must still meet the preconditions in MOA #3 to determine the appropriate implementation dates.

23 Axis submits the Reconsideration Decision also does not address the issue of whether the voluntary recognition process in this case was valid, a matter which it says CSSEA raised before the Arbitrator. Axis submits that "[w]ith all of these outstanding issues, it is entirely reasonable that Axis would not have immediately implemented all of the terms of [the] Collective Agreement". Axis further submits that the "proper procedure would be for the Union to seek to have those issues adjudicated by Arbitrator Moore, as the preliminary question of whether a voluntary recognition is possible under the *CSLRA* has now been adjudicated".

24 Axis acknowledges the Collective Agreement stipulates the "preconditions for the implementation of monetary and non-monetary terms", which include the provision of an annual employee list and the remittance of union dues. Axis submits, however, that as there has been "no adjudication of when the various terms of the Collective Agreement have or will come into force, there is no factual foundation upon which to allege that Axis is presently under an obligation to pay union dues". It further submits: "Without that, the Union cannot establish that Axis is in violation of any such obligation and the cases relied upon by the Union are entirely unhelpful".

25 Axis further submits that "during litigation over questions of whether there is a collective agreement and when it comes into force, the employer will be – quite properly – refraining from implementing the collective agreement terms", and it submits this is not a violation of Section 6(1). It further submits that, in the present case, CSSEA and CSSBA raised "a significant preliminary issue concerning the validity of a voluntary recognition agreement in the sector", and while this issue has been dealt with, "there remain a number of outstanding issues before Arbitrator Moore which must be

determined before Axis will be in a position to implement the terms of the Collective Agreement and before Axis could be found to be in violation of the Collective Agreement or the Code". It submits that therefore the Board should dismiss Local 1611's Section 6(1) complaint.

26 With respect to Local 1611's allegation that Axis violated Section 6(3)(d) of the Code, Axis denies that it has in any way contravened that provision, submitting that it has never engaged in any activity with the intention of persuading or dissuading any employee from participating in the affairs of a trade union. It submits it must not be forgotten that it invited Local 1611 to connect with its employees for the purpose of unionizing, and it says it has always remained neutral or positive in its communication with employees concerning Local 1611. It has stated to employees that matters remain unresolved at this time. Contrary to Local 1611's allegations, Axis submits, it has not refused to acknowledge the role of Local 1611; rather, it has communicated with Local 1611 and with employees in a manner which it says respects the role of the union. Axis submits there is no basis for finding it has breached Section 6(3)(d).

27 With respect to Local 1611's allegations in relation to Section 49 of the Code, Axis submits it is not true that it has made no efforts to contact Local 1611 and work towards implementation of the Collective Agreement. It responded to emails from Local 1611 in May 2014, setting out its position that it did not agree the Collective Agreement was immediately implemented retroactive to May 8, 2013. Axis submits there is "no certainty that the terms of the Collective Agreement are already in force", and "[w]ithout that factual foundation, the Union cannot establish that Axis is in breach of s. 49 of the Code".

28 Axis further submits that "based on the wording of the Reconsideration Panel's decision, it is the Union which is in breach of s. 49 of the Code". It submits that the Collective Agreement which Local 1611 says applies includes MOA #3, and Axis submits MOA #3 requires a certification or variance from the Board "so that the monetary and non-monetary terms of the Collective Agreement can be implemented to an identified group of individuals and in an orderly fashion such that Axis will be in a position to obtain funding for the contract". Axis submits it is "utterly perplexed" as to why Local 1611 refused to apply for certification.

29 Axis further submits the Board is not the forum to adjudicate the outstanding issues which it submits require adjudication before the Collective Agreement can be implemented. It submits the Board ought to follow its policy of deferring those outstanding issues to arbitration. Axis further submits that the "issue of the interpretation and application of MOA #3 is the central and foundational issue left to be determined as it is the provision from which implementation obligations flow". Axis submits that this is a "stand-alone issue that is properly dealt with by Arbitrator Moore who took jurisdiction of this very issue from the start and who remains seized of this issue". Axis submits that therefore the Board should follow its deferral policy and allow Arbitrator Moore to determine the outstanding issues "in the normal course".

30 In the alternative, if the Board concludes it should hear and decide what Axis describes as the "outstanding implementation issues", then Axis requests an oral hearing. It says the issues will require interpretation and application of MOA #3 and possibly other terms of the Collective Agreement. Axis submits such a process would result in monetary provisions being implemented no earlier than September 8, 2014.

31 With respect to the remedies sought by Local 1611, Axis submits they should not be granted. It gives various reasons why specific remedies should not be granted even if a breach of the Code is found. It submits, however, that no breach of the Code should be found.

CSSEA

32 CSSEA accepts and adopts the submissions of Axis. It further submits that, in finding the voluntary recognition agreement between Local 1611 and Axis was a valid collective agreement, the Board in the Reconsideration Decision "confirmed that Local 1611 is bound by MoA#3". CSSEA further submits that Local 1611's communications with CSSEA in May 2014 after the issuance of the Reconsideration Decision "do not represent a bone fide attempt by Local 1611 to seek implementation" of the Collective Agreement, but rather were "a desperate attempt to create evidence for the Complaint".

33 CSSEA further submits that the "effect of the Complaint has been to delay a return to Arbitrator Moore on the central issues of Local 1611's May 2013 grievance seeking many of the same remedies requested in the Complaint; a hearing process which Local 1611 has continued to avoid, contest and delay". CSSEA submits that "[i]f Local 1611 truly sought to ensure prompt implementation, one would expect a letter from Local 1611 to Arbitrator Moore seeking the earliest possible hearing dates". It further submits that Local 1611's "entire illogical stream of correspondence was clearly a ruse to attempt to create foundations for a punitive and vexatious unfair labour practice complaint against CSSEA".

34 CSSEA agrees with Axis that the Board should decline to take jurisdiction over the allegations raised and remedies sought in the Complaint because "the real substance and nature of the Complaint and/or the remedies sought form the basis and/or are available in another forum – arbitration – through an ongoing hearing procedure already commenced before Arbitrator Wayne Moore following his appointment in June 2013". CSSEA submits the parties "may now return to Arbitrator Moore and continue with the May 2013 grievance of Local 1611", and that on this basis the Complaint should be dismissed.

35 CSSEA further submits that, although Local 1611 asserts the employees ratified the voluntary recognition agreement, CSSEA "cannot agree that 83% of the ballots were cast in favour because no evidence has ever been presented by Local 1611 to substantiate that claim or the bona fides of the vote". With respect to Local 1611's request for the employee list, CSSEA submits that it and Axis have not delayed unduly and that they have "acted reasonably given the totality of the circumstances". In addition, CSSEA complains that Local 1611 contacted it regarding implementing the Collective Agreement when it could have contacted Axis directly. It submits Local 1611

has not provided documentary evidence to prove its assertions that the failure to provide the employee list is interfering with its ability to represent the bargaining unit, and therefore its assertions should not be accepted.

36 CSSEA concludes by submitting that it is "apparent that there remains a bona fide dispute between the parties on issues emanating from Local 1611's May 2013 grievance which remains before Arbitrator Moore", and that the parties are "entitled to continue to participate in that process". CSSEA submits the Board should "reject the Complaint and allow the parties to focus their resources on the remaining adjudicate [sic] issues before Arbitrator Moore in order to provide full and final resolution to Local 1611's May 2013 grievance".

CSSBA

37 CSSBA applies for interested party standing in this matter and, as directed in the telephone conference call, provides the submissions it would make if granted standing.

38 With respect to standing, CSSBA notes that, under the *CSLRA*, it is the exclusive bargaining agent for the constituent unions in the statutorily mandated association of unions. As such, it submits, it has "an ongoing interest in participation in Local 1611's complaint".

39 In addition, CSSBA submits that Axis and CSSEA have identified that the interpretation of MOA #3 "will form part of the dispute to be resolved by Arbitrator Moore or if not returned to Arbitrator Moore will be in dispute in this proceeding". CSSBA further submits that MOA #3 is an important part of the sector agreements which it negotiated, and that "[a]ny discussion as to the interpretation of MOA #3 requires the CSSBA pursuant to the Articles of Association (approved by the Board in BCLRB No. B259/2003) to be a participant". CSSBA further submits that decisions with respect to the scope of Local 1611's voluntary recognition agreement with Axis "are expected to form part of the dispute determined by Arbitrator Moore or alternatively reviewed by the Board". It submits the BCGEU, which currently holds a certification with Axis, may be affected by the outcome of these proceedings and that "[a]s such, the CSSBA should be a part of this proceeding should it continue".

40 CSSBA agrees with Axis and CSSEA that, following the issuance of the Reconsideration Decision, there were a number of outstanding issues which it submits should be returned to the Arbitrator for adjudication. It submits that neither Axis nor CSSEA should be found to have committed unfair labour practices because "both have acknowledged the Reconsideration Decision and agreed to resolve any outstanding issues between themselves and Local 1611". CSSBA submits that this is not a case where the employer is simply refusing to acknowledge the union: both Axis and CSSEA "have offered to return to the process initiated by Local 1611", that is, the arbitration before the Arbitrator. CSSBA states that it also agrees to return to that process.

41 CSSBA submits that a number of issues were raised before the Arbitrator, but the issue of whether the *CSLRA* permitted voluntary recognition agreements (and therefore whether there was a valid collective agreement between Axis and Local 1611)

was "hived off from the others", and the Arbitrator ruled in the December 2, 2013 award that he agreed with CSSBA and CSSEA that the matter should be decided by the Board. CSSBA submits that, following the Reconsideration Decision which decided that issue, it expected Local 1611 to contact the Arbitrator and schedule dates to resolve its grievance. It submits the Complaint is "premature until Arbitrator Moore has decided the validity of the issues still outstanding before him".

42 CSSBA further submits the Board decided that the *CSLRA* did not prohibit voluntary recognition agreements, but that it was not asked to consider, and did not decide, "the merits of the challenge to the voting process which created the voluntary recognition agreement or other issues such as the interpretation of MOA#3 on collective agreement rights (as opposed to Code rights) or bargaining unit scope". Relying on paragraph 14 of the Reconsideration Decision, CSSBA submits that the focus of the decision was on the issue of whether voluntary recognition agreements are permitted under the *CSLRA*. It submits that the other issues remain outstanding and should be decided by the Arbitrator, and that until then none of the remedies sought by Local 1611 should be granted, and the Complaint should be dismissed.

LOCAL 1611 FINAL REPLY

43 Local 1611 takes no position on CSSBA's standing application "because in our view the arguments being advanced by the CSSBA are not materially different than those of Axis/CSSEA and it would likely be beneficial to have the CSSBA bound by any decision of the Panel". (Axis and CSSEA support CSSBA's standing application.)

44 In response to the submissions made by Axis, CSSEA and CSSBA, Local 1611 submits it is undisputed that, following the Reconsideration Decision, Axis and CSSEA have refused to implement the Collective Agreement. Axis, CSSEA and CSSBA all submit this is because there are issues that remain outstanding, which should be decided by the Arbitrator, before Axis and CSSEA are obliged to implement the Collective Agreement. Local 1611 submits, however, that there are no issues outstanding in light of the Reconsideration Decision and no process still in existence before the Arbitrator.

45 Further, Local 1611 submits the other parties continue to attempt to rely on MOA #3 as requiring Local 1611 to apply for certification or variance, despite the finding of the Reconsideration Panel that voluntary recognition is permitted by the *CSLRA* and that the voluntary recognition agreement between Local 1611 and Axis is a valid collective agreement. Local 1611 submits the position of the other parties "represents a simple refusal, or conceptual unwillingness, to accept the clear and definitive ruling of the Reconsideration Panel".

46 Local 1611 submits the Reconsideration Decision is clear on its face: it finds the Collective Agreement is in full force and effect between Local 1611 and Axis. Local 1611 further submits that both the original panel and the reconsideration panel had regard to all of the matters the other parties now seek to place before the Arbitrator, and their attempt to return those matters to the Arbitrator constitutes a re-arguing of the case. Finally, Local 1611 submits the Arbitrator dismissed the application before him

and determined that it was appropriate for the Board to decide the matter. Accordingly, Local 1611 submits, the Board did not merely decide a preliminary matter. Rather, CSSEA and CSSBA argued to the Arbitrator that it was appropriate to refer the matter to the Board because the Board's determination of the voluntary recognition issue would substantially decide the entirety of the dispute.

47 Local 1611 submits the reconsideration panel did not refer any matters back to the Arbitrator. Further, Local 1611 submits, the reconsideration panel stated that it had "reviewed and considered the submissions of the parties" (Reconsideration Decision, para. 14), and those submissions included all of the issues which the other parties now seek to have referred to the Arbitrator, including the effect of MOA #3, the date of implementation, and the appropriateness and increased size of the bargaining unit. Local 1611 submits that, in these circumstances, the conclusion to be drawn is that those submissions were not persuasive to the reconsideration panel. They cannot now be resurrected before another tribunal.

48 Local 1611 further submits that the reconsideration panel clearly decided Local 1611 could use the voluntary recognition process to obtain the Collective Agreement, yet the other parties continue to argue that certification or variance is required. It submits that accepting these arguments would render illusory the right to proceed by way of voluntary recognition that the Reconsideration Decision confirms. It would also be inconsistent with the Reconsideration Decision, which heard and decided that issue and all of the issues the other parties submit remain outstanding and should be remitted to the Arbitrator. Local 1611 notes that it was the position of the other parties that the dispute should be resolved by the Board, not the Arbitrator, yet they now seek to re-argue before the Arbitrator the issues that were decided by the Board. Local 1611 submits the Board should not permit re-argument of decided matters.

49 Local 1611 submits that it is also evident from the "near bottom line" decision of the Arbitrator that he did not retain jurisdiction to decide matters, but rather was referring the parties' dispute to the Board to decide. The Arbitrator did not indicate that he was referring a preliminary matter to the Board or that he was retaining jurisdiction to address further issues once the Board had rendered a decision on a preliminary matter. Rather, consistent with the position advanced by CSSEA and CSSBA before him, he was referring the matter to the Board to decide in its entirety, which the Board did.

50 With respect to CSSEA's complaints about Local 1611 contacting it rather than contacting Axis directly regarding obtaining an employee list and other matters related to representing the bargaining unit, Local 1611 notes that, under the *CSLRA*, CSSEA is the accredited bargaining agent for Axis. In addition, on June 14, 2013, counsel for CSSEA wrote to counsel for Local 1611 specifically asking that communications be directed to CSSEA as the bargaining agent for Axis. Given CSSEA's status as the exclusive bargaining agent for Axis and its active role in this matter to date, Local 1611 directed its communications to CSSEA. Local 1611 further submits that it has appropriately directed its unfair labour practice against CSSEA as well as Axis, for its complicity in failing to abide by the terms of the Collective Agreement and for failing to bring its member (Axis) into compliance.

51 Local 1611 submits that CSSEA and Axis are required to implement and abide by the Collective Agreement and to engage Local 1611 as a full participant in the bargaining relationship, but to date they have refused to do so. In these circumstances, Local 1611 seeks a declaration that they have committed an unfair labour practice and orders requiring Axis and CSSEA to implement the Collective Agreement, including by providing the employee list requested by Local 1611 and other orders sought by Local 1611 in the Complaint.

52 Local 1611 notes that in the Complaint it did not ask the Board to determine the Collective Agreement's retroactive application, but nonetheless in its final reply it asks that the Board declare the effective date of the Collective Agreement is May 8, 2013, to "avoid needless additional litigation before an arbitrator". In an unsolicited sur-reply submission, Axis objects to Local 1611 seeking this additional remedy in its final reply, and submits the Board should disregard the request.

IV. ANALYSIS AND DECISION

53 I begin by noting that, as no party objects to the standing of CSSBA to make the submissions it has made in this matter, I have considered those submissions along with the submissions of the three parties.

54 Local 1611 complains that Axis and CSSEA have refused to acknowledge and act upon the finding of the reconsideration panel that "the voluntary recognition agreement between Local 1611 and Axis is confirmed as a valid collective agreement" (Reconsideration Decision, para. 38). Since the Board has declared there is a valid collective agreement between Local 1611 and Axis, Local 1611 submits it is a breach of the Code for the employer (Axis and CSSEA, as Axis' bargaining agent under the *CSLRA*) to refuse to implement it. Local 1611 seeks orders requiring Axis and CSSEA to implement the Collective Agreement.

55 The other parties acknowledge the reconsideration panel found the *CSLRA* permits bargaining rights to be gained by way of voluntary recognition (in the circumstances specified in paragraph 35 of the Reconsideration Decision). However, they argue they were not required to implement the agreement between Axis and Local 1611 upon the issuance of the Reconsideration Decision because, they say, it decided only that preliminary issue. They submit other issues remain outstanding which Local 1611 must ask the Arbitrator to decide (and which the Arbitrator must decide in Local 1611's favour) before they can be required to implement the Collective Agreement.

56 I am not persuaded the Reconsideration Decision only resolved a preliminary question of whether the *CSLRA* permits voluntary recognition. While it decided the *CSLRA* permits voluntary recognition (in the circumstances specified in paragraph 35 of the Reconsideration Decision), the reconsideration panel also decided that in this case the voluntary recognition agreement between Local 1611 and Axis is a valid collective agreement:

> In the result, <u>we find that there is no convincing reason or argument which has been raised to prohibit Local 1611 and Axis</u>

> from reaching the voluntary recognition agreement they did in the present matter. As well, given the history, context, and sound labour relations reasons supporting voluntary recognition under the Code, as set out in *Delta Hospital*, we find the voluntary recognition agreement of Local 1611 and Axis in the present matter, reflecting as it does exactly the community social services sector collective agreement between CSSEA and the CSSBA, should be accepted.
>
> Consequently, we find the Original Decision must be overturned. The declaration sought in the original proceedings by the Joint Applicants is dismissed and the voluntary recognition agreement between Local 1611 and Axis is confirmed as a valid collective agreement.
>
> Given this determination in respect to the Original Decision, the matter in B30/2014 is remitted to the original panel. (paras. 37-39, emphasis added)

57 Notwithstanding this finding by the reconsideration panel that the voluntary recognition agreement is a valid collective agreement, Axis, CSSEA and CSSBA submit they were not required to begin implementing the Collective Agreement in light of the Reconsideration Decision. Rather, they submit, the Reconsideration Decision left a number of issues outstanding, and Local 1611 was required to request that the Arbitrator resolve those outstanding issues before any obligation to implement the Collective Agreement could arise. The issues they identify as outstanding are: the scope of the Collective Agreement; whether MOA #3 still requires a certification or variance as a pre-condition to implementation; whether Local 1611's ratification process was valid; and when the Collective Agreement applies (the implementation date).

58 For the reasons which follow, I find Local 1611 was not required to request that the Arbitrator resolve outstanding issues before implementation of the Collective Agreement could begin. I find Axis, CSSEA and CSSBA were required to begin taking steps to implement the Collective Agreement, including by meeting with Local 1611 to discuss any issues they viewed as outstanding, in light of the Reconsideration Decision. I further find that two of the issues identified by Axis, CSSEA and CSSBA – whether MOA #3 still requires a certification or variance as a pre-condition to implementation and whether Local 1611's ratification process was valid – are not outstanding. They were decided by the Reconsideration Decision.

59 I accept that the Reconsideration Decision did not decide the precise scope of the Collective Agreement or its implementation date. However, I find the only issue requiring adjudication before the Collective Agreement can be implemented is the implementation date, and that issue should be decided by the Board, not the Arbitrator. I will now explain these findings more fully.

60 With respect to the scope of the Collective Agreement, Axis submits the bargaining unit has increased in size since the voluntary recognition agreement was entered into, and the scope of the Collective Agreement is therefore uncertain. I find, however, that this uncertainty as to the scope of the Collective Agreement does not

prevent Axis and CSSEA from beginning to implement it, including by providing at least a tentative employee list to Local 1611. Axis must be taken to have had an understanding of the scope of its voluntary recognition agreement with Local 1611 when it entered into it. Axis should provide an employee list based on that understanding and any subsequent changes in its relevant employee complement. To the extent the parties do not agree on individual exclusions or inclusions, those disagreements can be dealt with by arbitration if necessary. To the extent the parties do not agree on the list because of a dispute as to the implementation date of the Collective Agreement, that issue will be addressed by the Board.

61 With respect to whether MOA #3 still requires a certification or variance as a pre-condition to implementing the Collective Agreement, the reconsideration panel found voluntary recognition is a permissible method for gaining representation rights under the *CSLRA*. In answer to CSSEA's and CSSBA's alternative argument that, if the *CSLRA* permits voluntary recognition, there is still not a valid collective agreement in force and effect between Local 1611 and Axis because MOA #3 requires certification or variance before the terms of the Collective Agreement can be implemented, the reconsideration panel stated:

> Lastly, we do not accept that CSSEA and the CSSBA through their agreement in the form of Memorandum of Agreement #3 could limit the voluntary recognition rights of Local 1611 or Axis under the Code. Put shortly, CSSEA and the CSSBA cannot take away through their agreement the Code rights of other parties if, in fact, that was their intent. (para. 36)

62 Thus, the reconsideration panel decided the language of MOA #3 could not be relied on to impose a requirement for certification or variance in circumstances where a valid collective agreement relationship and agreement had been formed between Local 1611 and Axis by way of voluntary recognition. The reconsideration panel did not remit any issue with respect to the interpretation of MOA #3 to the Arbitrator (or anyone else). In particular, it did not remit the issue of whether certification or variance was still required as a pre-condition to implementing the Collective Agreement. Reading the Reconsideration Decision as a whole, I find this issue was decided by the reconsideration panel: certification or variance is not required where there is a valid voluntary recognition agreement that conforms to the requirements set out in paragraph 35 of the Reconsideration Decision.

63 With respect to CSSEA's argument that Local 1611's ratification process should not be accepted as proper, I find this matter was implicitly addressed by the reconsideration panel's finding that there is a valid collective agreement between Local 1611 and Axis arising from the voluntary recognition process. In any event, CSSEA submits Local 1611's assertion of a proper ratification process should not be accepted at face value, yet I find CSSEA does not provide a basis for questioning Local 1611's assertion. CSSEA does not claim any direct knowledge of the ratification process and, at the relevant time, Axis did not raise any issue with respect to it. In these circumstances, I find no reason to question Local 1611's assertion of a valid ratification process or require it to provide proof of its assertion.

64 Accordingly, I find these three issues do not require adjudication before the parties can begin to take steps to implement the Collective Agreement, including by Axis providing an employee list to Local 1611. However, I find the issue of the implementation date of the Collective Agreement requires adjudication unless the parties are able to resolve it by agreement. I further find that issue should be decided by the Board, not the Arbitrator.

65 The Arbitrator was appointed to decide Local 1611's grievance of Axis' refusal to implement the voluntary recognition agreement. CSSEA and CSSBA objected to the Arbitrator's jurisdiction on the basis that the voluntary recognition agreement was not a valid collective agreement in force and effect, and submitted to the Arbitrator that the issue of the validity of the agreement should be decided by the Board, not the Arbitrator. In their November 15, 2013 submissions to the Arbitrator, CSSEA and CSSBA did not ask the Arbitrator to retain jurisdiction in the event the Board found the agreement to be valid; to the contrary, both concluded their submissions by arguing Local 1611's grievance "should be dismissed".

66 In his December 2, 2013 award, the Arbitrator acceded to CSSEA and CSSBA's position by agreeing that the validity of the agreement should be determined by the Board. He cancelled the hearing date that had been scheduled for the merits of the grievance, and he did not expressly state that he remain seized of any matter or retained any jurisdiction. In these circumstances, I find that, even if the Arbitrator retains jurisdiction arising from Local 1611's grievance, the issue of the implementation date should nonetheless be decided by the Board, not the Arbitrator. As the Arbitrator noted in his award, he could have decided the validity of the agreement, but instead he acceded to CSSEA and CSSBA's request that the Board decide that issue. In my view, having decided the validity of the agreement, the Board should also decide the outstanding matter arising from that determination, namely, the implementation date.

67 In summary, I find the only outstanding matter which may require adjudication before the Collective Agreement can be fully implemented is the implementation date. I find Axis, CSSEA and CSSBA should have begun the process of implementing the Collective Agreement upon issuance of the Reconsideration Decision, including by raising any issues they saw as outstanding with Local 1611, and by providing an employee list in response to Local 1611's request.

68 I turn now to Local 1611's allegations that, in refusing to take any steps to implement the Collective Agreement, Axis and CSSEA violated Sections 6(3)(d), 6(1) and 49 of the Code. I find no merit to the complaint under Section 6(3)(d) of the Code. I am satisfied the actions or inactions of Axis and CSSEA were not for the purpose of compelling or inducing an employee to refrain from becoming or continuing to be a member of a trade union. With respect to the complaint under Section 6(1), I find the refusal of Axis and CSSEA to engage with Local 1611 in beginning to implement the Collective Agreement after the issuance of the Reconsideration Decision interfered with the administration of Local 1611 contrary to Section 6(1). In light of the finding in the Reconsideration Decision of a valid collective agreement, Local 1611 was entitled to

engage Axis and CSSEA in beginning to implement the Collective Agreement, and Axis and CSSEA were not entitled to refuse to begin engaging in that process.

69 With respect to the complaint under Section 49, as noted above, I find the parties were not in a position to fully implement the provisions of the Collective Agreement until the issue of the implementation date is resolved. However, I find Axis and CSSEA breached Section 49 in not complying with Local 1611's request for an employee list as required under the Collective Agreement. I find they were in a position to comply with this request, at least to the extent of providing an initial list, even if the Collective Agreement implementation date was in dispute.

70 By way of remedy, I order Axis and CSSEA to provide Local 1611 with a current employee seniority list containing names, addresses and contact numbers. To the extent Local 1611 seeks this information with respect to employees employed since May 8, 2013, I find that would require agreement or a finding by the Board that May 8, 2013 is the implementation date. Accordingly, at this time, only a list of current employees is required, although a further list may be required if an earlier implementation date is either agreed to or found by the Board.

71 I am not persuaded I should grant the other orders sought by Local 1611 at this time, given the lack of agreement as to the implementation date of the Collective Agreement. I direct the parties to meet within 15 days of this decision, unless otherwise mutually agreed, to address the issue of the implementation date of the Collective Agreement. If the implementation date remains an outstanding issue after that meeting, either party may contact my assistant to arrange a case management meeting for the purpose of beginning a process before me for resolving that issue.

V. CONCLUSION

72 For the reasons given, I find Axis and CSSEA have contravened Sections 6(1) and 49 of the Code to the extent described above, and I make the remedial declarations and orders set out above. I remain seized of the issue of the implementation date, and any further orders that may flow from it, if the parties cannot resolve that issue.

LABOUR RELATIONS BOARD

"ELENA MILLER"

ELENA MILLER
VICE-CHAIR

BCLRB No. B135/2014
(Leave for Reconsideration of BCLRB No. B130/2014)

BRITISH COLUMBIA LABOUR RELATIONS BOARD

AXIS FAMILY RESOURCES LTD.

("Axis")

-and-

COMMUNITY SOCIAL SERVICES EMPLOYERS' ASSOCIATION
OF BRITISH COLUMBIA

("CSSEA")

-and-

COMMUNITY SOCIAL SERVICES BARGAINING ASSOCIATION

("CSSBA")

-and-

CONSTRUCTION AND SPECIALIZED WORKERS' UNION
LOCAL 1611

("Local 1611")

PANEL:	Brent Mullin, Chair Bruce R. Wilkins, Associate Chair, Adjudication Leah Terai, Vice-Chair
APPEARANCES:	Lindsie M. Thomson, for Axis
CASE NO.:	67494
DATE OF DECISION:	July 23, 2014

DECISION OF THE BOARD

1 Axis applies under Section 141 of the *Labour Relations Code* (the "Code") for leave and reconsideration of BCLRB No. B130/2014 (the "Original Decision"). The Original Decision found that Axis and CSSEA had contravened Sections 6(1) and 49 of the Code in failing to implement a collective agreement with Local 1611. That collective agreement had been declared valid in BCLRB No. B84/2014 ("B84/2014" or the "Reconsideration Decision"). In its application, Axis also seeks a stay of the Original Decision pending the outcome of CSSEA's judicial review of B84/2014.

2 Axis says that the Original Decision is inconsistent with the principles expressed or implied in the Code on the following bases:

> 1. the Panel erred when it concluded that Axis and CSSEA were required to begin implementing the Collective Agreement, despite the fact that the Reconsideration Decision did not decide the date upon which the Collective Agreement was in effect;
>
> 2. the Panel erred when it concluded that Axis and CSSEA were required to begin implementing the Collective Agreement, despite the fact that the Reconsideration Decision did not decide the scope of the Collective Agreement;
>
> 3. the Panel erred when it concluded that the Reconsideration Decision had determined the issue of whether MOA #3 still required Local 1611 to obtain a certification or variance as a precondition to implementation; and
>
> 4. the Panel erred when it concluded that the Reconsideration Decision implicitly determined the issue of whether Local 1611's ratification process was valid.

3 An application under Section 141 must meet the Board's established test before leave for reconsideration will be granted. An applicant must establish a good, arguable case of sufficient merit that may succeed on one of the established grounds for reconsideration: *Brinco Coal Mining Corporation*, BCLRB No. B74/93 (Leave for Reconsideration of BCLRB No. B6/93), 20 C.L.R.B.R. (2d) 44.

4 We will address in turn each of the bases upon which leave and reconsideration is sought.

1. the Panel erred when it concluded that Axis and CSSEA were required to begin implementing the Collective Agreement, despite the fact that the Reconsideration Decision did not decide the date upon which the Collective Agreement was in effect

5 B84/2014 held that the voluntary recognition agreement between Local 1611 and Axis was a valid collective agreement (para. 38).

6 Rule 22(2) of the Labour Relations Board Rules provides:

> A decision or order of the board shall state its date of publication, which shall be the date it becomes effective, unless the decision or order, or a part of it, is stated to be effective on another date.

The date of publication of B84/2014 was May 8, 2014. B84/2014 did not state that its decision would be effective on another date. As a result, the presumptive effective date of B84/2014 under Rule 22(2) of the Board's Rules was May 8, 2014.

7 In its original application to the Board in this matter, Local 1611 took the position that in light of the circumstances in the case its collective agreement with Axis should be held to be effective from May 8, 2013. That earlier date is the only other effective date for B84/2014 or implementation date for the collective agreement which has been raised by the parties. As a result, as in effect held in the Original Decision, further to the determination in B84/2014 the parties should commence implementing the collective agreement at least as of the later potential effective date of B84/2014, namely May 8, 2014.

8 As a further result, we find there was no error in the Original Decision proceeding in that fashion.

2. the Panel erred when it concluded that Axis and CSSEA were required to begin implementing the Collective Agreement, despite the fact that the Reconsideration Decision did not decide the scope of the Collective Agreement

9 In respect to this basis for leave and reconsideration, we note first of all the agreement which Axis entered into with Local 1611. It states:

> The Employer [Axis] and the Union [Local 1611] agree to be bound by all of the terms of the Collective Agreement between Community Social Services Employers' Association and Community Social Services Bargaining Association of Unions dated April 1, 2010 to March 2012 as modified or renegotiated from time to time. (emphasis added)

10 From the outset of the proceedings in this matter at the Board, the parties have acknowledged that "Local 1611 is a member of CSSBA. Axis is a member of CSSEA": BCLRB No. B26/2014, para. 3. The parties are thus obviously familiar with the nature of the relations between CSSEA and CSSBA, including the three potential collective agreements provided for under the constituting legislation. In that context, Axis and Local 1611 agreed, as quoted above, "to be bound by all of the terms of the Collective Agreement between Community Social Services Employers' Association and Community Social Services Bargaining Association of Unions dated April 1, 2010 to March 2012" (emphasis added). We find in the circumstances that the parties must be taken to have understood which collective agreement they were agreeing to.

11 It is in that context that Axis argues that "[i]t is not clear which Axis sites, contracts, employees, or classifications are covered by the Collective Agreement". Axis further submits that "[w]ithout knowing the scope of the Collective Agreement, it was an error to conclude that Axis and CSSEA had committed a breach of ss. 6(1) and 49 by not taking steps to implement the Collective Agreement". Axis also says it has grown since January 2013 and that adds a further lack of clarity to the circumstances.

12 In respect to these arguments, we agree with the Original Decision that in the circumstances of the case "Axis must be taken to have had an understanding of the scope of its voluntary recognition agreement with Local 1611 when it entered into it" (para. 60). We further agree that in the circumstances it was appropriate to require that "Axis should provide an employee list based on that understanding and any subsequent changes in its relevant employee complement" and to hold that any disagreements between the parties could then be dealt with adjudicatively (*ibid.*).

13 As a result, we agree with the determinations in the Original Decision and do not accept this second basis upon which leave and reconsideration is sought.

3. the Panel erred when it concluded that the Reconsideration Decision had determined the issue of whether MOA #3 still required Local 1611 to obtain a certification or variance as a precondition to implementation

14 The leave and reconsideration application acknowledges that the Original Decision relied upon the following passage in B84/2014 in determining that Memorandum of Agreement #3 did not require Local 1611 to obtain a certification or variance from the Board as a precondition to the implementation of its agreement with Axis:

> Lastly, we do not accept that CSSEA and the CSSBA through their agreement in the form of Memorandum of Agreement #3 could limit the voluntary recognition rights of Local 1611 or Axis under the Code. Put shortly, CSSEA and the CSSBA cannot take away through their agreement the Code rights of other parties if, in fact, that was their intent. (B84/2014, para. 36)

We find that the Original Decision correctly relied on this determination in the Reconsideration Decision and that in doing so it gave effect to what was the clear meaning of this determination in B84/2014.

15 Equally, we find that the restricted, even abrogated, meaning that Axis would attribute to this determination in B84/2014 cannot be accepted. Further, Axis' interpretation of this determination in B84/2014 did not provide a reasonable basis for it to not proceed with implementing the collective agreement it had agreed to with Local 1611.

16 As a result, this basis upon which leave and reconsideration are sought is dismissed.

4. <u>the Panel erred when it concluded that the Reconsideration Decision implicitly determined the issue of whether Local 1611's ratification process was valid</u>

17 Under this basis for seeking leave and reconsideration, Axis submits:

> Without any determination on the validity of the ratification process, the issue of which had been argued by the parties before the Board and Arbitrator Wayne Moore, it was entirely reasonable for Axis to not provide Local 1611 with a list of employees and their personal information. Indeed, Axis is still without any convincing evidence that its employees have agreed to have Local 1611 as its representative and/or ratified the Collective Agreement.

18 This submission misses the first and most fundamental point. In B84/2014, the Board unequivocally held that "the voluntary recognition agreement between Local 1611 and Axis is confirmed as a valid collective agreement" (para. 38). At that point, it is the parties' obligation to comply with that determination. It is not up to Axis to determine whether it will do so or not do so based upon its belief or feelings that it "is still without any convincing evidence" regarding the voluntary recognition agreement it entered into. It is not "entirely reasonable" for Axis to decide not to comply with and implement the determination in B84/2014 on that basis.

19 As well, Axis made only one submission to the reconsideration panel leading to B84/2014. That submission was that it disagreed with Local 1611's position that it did not have to proceed to the Board and seek a formal certification. Axis did not make any further submissions, including any submissions in respect to the ratification process which had been adopted by Local 1611. In those circumstances it is not open to Axis to now raise arguments in respect to the ratification process in support of not implementing the clear decision in B84/2014.

20 As well, we note that the leave and reconsideration application does not provide an adequate basis upon which to challenge the ultimate determination in paragraph 63 of the Original Decision:

> With respect to CSSEA's argument that Local 1611's ratification process should not be accepted as proper, I find this matter was implicitly addressed by the reconsideration panel's finding that there is a valid collective agreement between Local 1611 and Axis arising from the voluntary recognition process. In any event, CSSEA submits Local 1611's assertion of a proper ratification process should not be accepted at face value, yet I find CSSEA does not provide a basis for questioning Local 1611's assertion. CSSEA does not claim any direct knowledge of the ratification process and, at the relevant time, Axis did not raise any issue with respect to it. In these circumstances, I find no reason to question Local 1611's assertion of a valid ratification process or require it to provide proof of its assertion. (para. 63)

While we would not adopt the phrase “implicitly addressed” in the above passage, we agree with the conclusion in paragraph 63 of the Original Decision.

21 In light of the above, leave is denied and the application for reconsideration is dismissed. In the circumstances, we need not address the application for a stay.

LABOUR RELATIONS BOARD

“BRENT MULLIN”

BRENT MULLIN
CHAIR

“BRUCE WILKINS”

BRUCE R. WILKINS
ASSOCIATE CHAIR, ADJUDICATION

“LEAH TERAI”

LEAH TERAI
VICE-CHAIR

BCLRB No. B139/2014
(Leave for Reconsideration of BCLRB No. B130/2014)

BRITISH COLUMBIA LABOUR RELATIONS BOARD

AXIS FAMILY RESOURCES LTD.

("Axis")

-and-

COMMUNITY SOCIAL SERVICES EMPLOYERS' ASSOCIATION
OF BRITISH COLUMBIA

("CSSEA")

-and-

COMMUNITY SOCIAL SERVICES BARGAINING ASSOCIATION

("CSSBA")

-and-

CONSTRUCTION AND SPECIALIZED WORKERS' UNION
LOCAL 1611

("Local 1611")

PANEL:	Brent Mullin, Chair Bruce R. Wilkins, Associate Chair, Adjudication Leah Terai, Vice-Chair
APPEARANCES:	Jessica Gregory, for CSSEA
CASE NO.:	67515 and 67518
DATE OF DECISION:	July 31, 2014

DECISION OF THE BOARD

1 CSSEA applies under Section 141 of the *Labour Relations Code* (the "Code") for leave and reconsideration of BCLRB No. B130/2014 (the "Original Decision"). The Original Decision found that Axis and CSSEA had contravened Sections 6(1) and 49 of the Code in failing to implement a collective agreement with Local 1611. That collective agreement had been declared valid in BCLRB No. B84/2014 ("B84/2014"). In its application, CSSEA also seeks a stay of the Original Decision.

2 The present application seeks leave and reconsideration of the Original Decision on thirteen enumerated bases. They are numbered 1. through 4. and a) through i) in the application.

3 The background to the application is as follows. The Original Decision was issued on July 8, 2014. On July 18, 2014 Axis sought leave and reconsideration and a stay of the Original Decision. The leave and reconsideration application was dismissed on July 23, 2014 in BCLRB No. B135/2014 ("B135/2014").

4 In respect to its stay application, Axis submitted, "There is great urgency to the stay application as Axis (and CSSEA) have until July 23, 2014 to comply with the orders made by the Panel in the Unfair Labour Practice Decision [the Original Decision]".

5 With the dismissal of Axis' leave and reconsideration application, it was not necessary to address its application for a stay: B135/2014, para. 21.

6 The parties, including CSSEA, received the Board's decision in B135/2014 during business hours on July 23, 2014.

7 CSSEA later sent its leave and reconsideration application to the Board on July 23, 2014, after the Board's long-established filing hours. Consequently, the Board's Registry, according to its ordinary practice, deemed the application to have been received on the next day, July 24, 2014.

8 An application under Section 141 must meet the Board's established test before leave for reconsideration will be granted. An applicant must establish a good, arguable case of sufficient merit that may succeed on one of the established grounds for reconsideration: *Brinco Coal Mining Corporation*, BCLRB No. B74/93 (Leave for Reconsideration of BCLRB No. B6/93), 20 C.L.R.B.R. (2d) 44 ("*Brinco*").

9 In the first basis upon which it seeks leave and reconsideration of the Original Decision, CSSEA says that the Original Decision "errs in repeatedly grouping Axis and CSSEA together and imposing the same legal obligations on them despite the fact that they are distinct legal entities with very different legal rights and obligations under section 6(1) and section 49". We do not accept that submission. While undoubtedly Axis and

CSSEA are distinct legal entities, for the purpose of the matters dealt with in the Original Decision they can both be found responsible in respect to the sections of the Code at issue. It is trite that under the *Community Services Labour Relations Act*, S.B.C. 2003, Chapter 27, once a union such as Local 1611 comes to represent a group of Axis employees, as was decided in B84/2014, then CSSEA represents Axis in respect to collective bargaining and the collective agreement administration matters which flow from that. As a result, CSSEA was also found responsible in respect to the matters at issue in the Original Decision. We find no error in that.

10 In the second basis upon which it seeks leave and reconsideration of the Original Decision, CSSEA raises a number of matters in which it says the Original Decision denied CSSEA a right to a fair hearing in reaching conclusions without an evidentiary foundation. We find these arguments are without merit. They are based on CSSEA's non-acceptance of the Board's determinations in B84/2014 and B135/2014, along with the error in its first ground for leave and reconsideration here dealt with immediately above. These arguments do not raise a good, arguable case for reconsideration and thus leave is denied in respect to them.

11 In the third basis upon which it seeks leave and reconsideration, CSSEA continues to raise a number of matters which were not accepted in B84/2014 and B135/2014. We will not repeat those points here, though we will address the onus issue. As explained in B84/2014 at paragraphs 18-20, the Board has long recognized and supported voluntary recognition agreements under the Code, referring to them as "the less formal, and often more expedient, voluntary recognition system" (para. 20). However, when a voluntary recognition agreement is being held up as a bar to another union's certification application under the timing requirements in the Code, the Board will require the parties to the voluntary recognition agreement to provide in one form or another evidence of the support of the employees for the union within the voluntary recognition arrangement. That is in order that employee access to the rights under the Code are not being improperly circumvented.

12 However, that is not the case in the present matter. Local 1611's voluntary recognition agreement with Axis is not being held up as a bar to the exercise of employee rights under the Code. To the contrary, it is the means by which those employee rights of representation are being exercised. As just noted above, the Board has long recognized this means of employees gaining representation rights under the Code and that was put into effect in B84/2014.

13 In the proceedings before the Board, Local 1611 had put forward the bases upon which it said the employees had ratified the agreement it had reached with Axis. In doing so, Local 1611 had put forward a sufficient basis upon which to claim the legitimacy of the voluntary recognition agreement. At that point, it was up to Axis or CSSEA to bring forward particulars which would sufficiently put into dispute the validity of what Local 1611 had asserted in order to create a *lis* and require that there be a determination in respect to that dispute. Axis and CSSEA did not do so: see, for instance, B135/2014, para. 20.

14 In the result, we find that the third basis upon which CSSEA seeks leave does not present a good, arguable case for reconsideration and leave is denied in respect to it.

15 In respect to the numerous bases upon which CSSEA seeks leave and reconsideration of the Original Decision in points 4. and a)-i) of its application, in light of the determinations in B84/2014 and B135/2014, and our determinations above, we find that these arguments do not present a good, arguable case that the Original Decision is in breach of the requirements in Section 141 of the Code. As a result, we decline to exercise our discretion in favour of leave and leave is denied.

16 In light of the above, leave is denied and the application for reconsideration is dismissed. In the circumstances, CSSEA's application for a stay need not be addressed.

LABOUR RELATIONS BOARD

"BRENT MULLIN"

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CHAIR

"BRUCE WILKINS"

BRUCE R. WILKINS
ASSOCIATE CHAIR, ADJUDICATION

"LEAH TERAI"

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