



October 28, 2010

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**RE: An Unfair Labour Practice complaint brought by Service Employees
International Union Local 2, Brewery, General & Professional
Workers' Union affecting B. Gringras Enterprises Ltd. o/a Bee Clean
Building Maintenance – Board File No. GE-05980**

[1] On October 1, 2010, the Union filed an unfair labour practice complaint against B. Gringras Enterprises Ltd. o/a Bee Clean Building Maintenance (the "Employer"). The unfair labour practice complaint alleges a number of violations of the *Labour Relations Code* in relation to the employment of various employees of the Employer. Additionally, the complaint alleges violations of the *Code* in relation to stopping or otherwise interfering with Service Employees International Union Local 2, Brewery, General & Professional Workers' Union (the "Union") organizing drive during September 2010.

[2] In response to the unfair labour practice complaint, the Board, in its normal course, asked the Employer to file a response to the complaint. On the date set for reply from the company, the Employer counsel sent an email to the solicitor for the Union with a copy to the general email box of the Board asking for further and better particulars in relation to the allegations set out in the complaint. The Union responded by email, again copying the Board's general email account, questioning the timeliness of the request for particulars but nonetheless agreeing to look at the particulars request and provide their response. Thereafter a series of emails ensued confirming the Board practice with regard to proper

service and delivery of documentation as well as the Union providing a response to the Employer's request for further and better particulars.

[3] By letter dated October 26, 2010, the Employer responded to the Union's further and better particulars stating the response was inadequate and requesting more detail.

[4] This request for more detailed information came before Chair Asbell sitting alone on Wednesday, October 27, 2010.

Decision

[5] The Employer states it does not have sufficient information to gather the material necessary to defend itself at hearing. It claims the Union's response to its earlier request is inadequate and will only result in prolonging the hearing as the Employer is left in at least a partial vacuum in relation to the allegations set out in the complaint. In reply, on a generic basis, the Union responds that it has set out the "what, when, where, who, and how" of each allegation. Not only has it provided the basic information necessary for the complaint, it has gone into greater detail than that which is required for the Employer to answer the complaint.

[6] This Board deals with applications for further and better particulars on a regular basis. It is well established the applicant's initial correspondence should clearly set out a statement of fact that, if accepted as true, would establish that the *Code* applies or was violated. The applicant does not have to prove the allegations in the written complaint but they must lay out the facts. The reader should know from the complaint when and how it occurred as well as who committed the alleged contravention. This requirement prevents "fishing expeditions."

[7] The facts should justify the remedy requested. Particulars do not need to disclose the exact details of the evidence or the identity of the witnesses or documents to be called. The Board requires particulars for each section of the *Code* violated.

[8] Information Bulletin #2, at IV. Preliminary Steps in Processing Applications sets out a description as to what constitutes particulars:

Particulars

Particulars are the details, the "who, what, when, where and how," of the application. They are the facts and events the applicant relies on to justify the Board giving the relief the applicant seeks. The applicant's particulars should set out these facts and events in plain English. This should include: what did or did not happen, who was involved, and when and where these facts and events took place. The applicant must allege facts that, if true, establish the section of the legislation in question may apply or may have been violated. See: *U.A. Local 488 v. Fish Int'l Canada [1985] Alta. L.R.B. 85-073*.

Particulars are not the same as evidence. Particulars only set out what facts and events the applicant intends to prove. They do not have to say how the applicant intends to prove them. Nor do they have to disclose the identities of the applicant's witnesses. However, if the application alleges someone said something, the applicant must provide a description of what was said, who said it, and when and where it was said.

A good set of particulars tells the other parties what the thrust of the case against them is, and what they must do to prepare their own case. Poor particulars cause adjournments, hearing delays, additional expense or inconvenience, and can even cause the application to be dismissed.

The Board may refuse to process an application that lacks particulars. Or, a respondent may seek further particulars after it is served with the application. Generally, the Board will dismiss an application because of poor particulars only after the applicant has failed to file satisfactory particulars in response to a Board directive. See: *Carpenters Local 1325 v. Fraser Bros. Roofing Ltd. et al.* [1997] *Alta.L.R.B.R.* 541.

[9] Relying upon the above description of the law, I now review each of the items in dispute. As there are several items in dispute, I will follow the Union's original complaint and the Employer's response to answer each individual request. The items remaining in dispute flow out of Appendix B from the Union's complaint. For each item I set out the Union's original paragraph from their complaint followed by the positions of the parties. My decision then follows each individual paragraph.

4. On or around September 3, 2010, SEIU Local 2 formally commenced an organizing drive with respect to employees of Bee Clean employed at the University of Alberta in Edmonton. Bee Clean is currently under contract to provide cleaning and/or janitorial services to the University. Although the Union's organizing drive formally commenced on or around September 3rd, it engaged in research, investigation, and other activities prior to September 3rd, which likely alerted the Company to the Union's impending organizing campaign.

The Employer states it is in a vacuum and is unable to respond to this paragraph as there are no particulars provided. The Union responds saying no further particulars are necessary as this paragraph is intended to provide a degree of context and background to the rest of Schedule "B" and does not, in itself, allege a violation of the *Code*.

Having reviewed the complaint and the contextual position in which the paragraph appears, I am in agreement with the Union and find no further particulars or information is required.

5. On September 3, 2010, Mr. Bill Cromwell, Bee Clean's Site Manager at the University of Alberta, requested that Mr. Danilo De Leon, an employee of Bee Clean (and a Temporary Foreign Worker from the Philippines - as set out below), report to the Bee Clean office in the University's Li Ka Shing building prior to his shift, which Mr. De Leon did. During the discussion between the two, Mr. Cromwell made several references to unions and unionization. Among other things, Mr. Cromwell related his experience at another location/entity named Northlands, which was unionized, and stated that unionization "doesn't make sense." Mr. Cromwell went on to state that forming a union would be against Bee Clean's Code of Conduct.

The Employer wants further particulars of the "several references to unions and unionization". The Union states the information is already contained in the paragraph and nothing further is

required. The Union specifically notes it already refers to Mr. Cromwell's comment about his personal experience with a trade union at "Northlands" as well as Mr. Cromwell's statement to Mr. De Leon that forming a Union would be against Bee Clean's Code of Conduct.

Having reviewed the complaint and the response, I am satisfied the initial complaint adequately set out the who, what and where of the allegation. Additionally the context and content of the discussion is set out. Thus, I am satisfied the Employer has enough material before it to adequately respond to the allegation.

8. By way of background, there are a number of Temporary Foreign Workers ("TFWs") employed by Bee Clean at its University of Alberta work location, including TFWs from the Philippines. Mr. De Leon, to whom the statement was made by Mr. Bhimraj, is a TFW from the Philippines. Mr. Bhimraj's statement(s) were then communicated by Mr. De Leon to others in the Filipino TFW group at Bee Clean's University of Alberta work location.

The Employer seeks particulars of the "others in the Filipino TFW group" and more specifically what Mr. De Leon told these other employees. The Union responds saying this paragraph refers to the paragraph immediately before which sets out who was involved in the discussions, what was being said, where it was said and when it was said. While Mr. De Leon may have communicated this discussion to other employees, the gist of the paragraph is in relation to the comments made to him by the supervisors of the company.

Reviewing paragraphs seven and eight together the Employer has full particulars before it as to be able to address the allegation. The particulars adequately set out including who made the statements, to whom the statements were made, where the statements were made and the timing of the statements. Nothing further is required.

11. At or around 11 p.m., Ms. Accord reported back to the Bee Clean office to return her keys. At that time, Mr. Bhimraj stated to Ms. Accord that there was no need for her to report for her shift on Sunday, indicating that he no longer had a position for her. Ms. Accord had been employed by Bee Clean since 2005 and was, therefore, not a particularly junior employee. In addition, she had also been specifically requested by Bee Clean to work the 6 p.m. to 11 p.m. shift. In addition to terminating Ms. Accord, Mr. Bhimraj stated to Mr. Persaud, a fellow supervisor, that the Company needed to get ready to hire many new employees. This incident took place in front of other of the Responding Party's employees.

The Employer seeks further particulars relating to "other of the responding parties employees" as set out in the paragraph. The Union responds saying the allegations set out in paragraphs 10 and 11 clearly establish the thrust of their case being asserted in those paragraphs. In particular, paragraph 11 clearly delineates that Ms. Accord reported to the office at the end of the shift and was informed by Mr. Bhimraj that he no longer had a position for her. This was after Ms. Accord was identified on the Union's leaflet by Mr. Bhimraj. Therefore, argues the Union, the Employer clearly knows what is being alleged against it and can either deny or accept that the events occurred. Not identifying the other employees present does not affect the Employer's ability to answer the allegations and is merely a fishing expedition.

I accept the argument from the Union. It has set out the location and timing of the conversation and who was involved. Anything further is evidence or a search for additional witnesses. Nothing further is needed from the Union in this regard.

13. At approximately 6 a.m. on September 24, 2010, Mr. Persaud, one of Bee Clean's supervisors, approached Mr. Coy in the Cameron building. Mr. Persaud stated that he was aware of the Union's meeting planned for that morning and indicated that he was going to attend the meeting and take a video of it. Mr. Coy then made a joking remark to Mr. Persaud, who responded by stating "You think it's funny? In the long run it's not going to be funny." Other employees, including Abdi Bune and Jamal Abdulla, were present when these comments were made by Mr Persaud.

The Employer asks for particulars as to what the "joking remark" was as well as the "other employees" referenced in the paragraph. The Union responds by stating the "joking remark" has no relevance to the Employer's ability to respond to the allegations set out in the paragraph. Quite simply, it does not matter what the "joking remark" was in relation to the Employer's ability to respond to the allegation. The Union argues it clearly has set out the allegation and nothing further is required.

Again, I accept the Union's argument in this regard and find it has set out sufficient particulars for the Employer to respond. Not only did it set out the context for the discussion, it actually set out, in this scenario, more or less exactly what the supervisor said in response to this joking remark. It is the supervisor's response which is the subject of the allegation especially in context with what is alleged to have ultimately happened in this case.

15. At or around 6:25 a.m., Mr. Persaud approached Mr. Jamal Abdulla in the Bee Clean office, pointed to the Union's leaflet and asked "is this you?". Mr. Abdulla indicated it was, to which Mr Persaud then stated "so you're the group leader?". Mr. Abdulla then left the workplace and proceeded to the Union's meeting. Prior to entering the meeting, Mr. Abdulla noticed Mr. Persaud across the street from the meeting location, observing employees entering the building.

The Employer seeks particulars as to what employees Mr. Persaud is alleged to have observed entering the building. The Union responds saying no further particulars are necessary as there is simply no confusion as to what is alleged against the Employer in this paragraph. Any further information relating to who is attending a Union meeting is simply a fishing expedition on behalf of the Employer.

In reviewing this paragraph I am satisfied it clearly identifies a supervisor approached an employee in the Bee Clean office pointing to the Union's leaflet and asking "is this you?" In this regard it identifies who approached whom, when it occurred and what was said. It is clear, concise and well set out. It then identifies this same employee subsequently saw the same supervisor outside observing employees entering a union meeting. The particulars clearly allege the same employee observed the supervisor and where he was placed. The information requested from the Employer is not further and better particulars. Nothing further is needed with regard to this request.

17. On September 24th, Ms. Simarjit Nahal was taking her break in the employees' lunch room, along with several other employees of Bee Clean. Mr. Bhimraj entered the room, carrying a copy of the Union's leaflet. He then indicated to the workers present that any individual appearing on the leaflet would be laid off and then showed the leaflet to all of the employees present.

The Employer seeks further and better particulars relating to the comments of "several other employees at Bee Clean", the "workers present" and "all of the employees present" as set out in the paragraph. The Union responds stating it clearly set out the supervisor making the comments, what the supervisor said and in a generic sense who he made the statement to. It identified one of the witnesses who will substantiate the statements made by the supervisor. It states that it is not required to further identify witnesses or other individuals given that one has already been identified. It further states the Employer clearly has a basis upon which it can answer the allegations.

Again, in reviewing the material, the Union has adequately set out who said what, to whom and when it was said. It can adequately turn its mind to finding evidence in support of its position. Nothing further is required from the Union in relation to this paragraph.

28. Although the Employer claimed, in its termination letter, that it could no longer employ Mr. Coy at the University of Alberta campus, ostensibly because its client did not wish to have Mr. Coy on its property, the Union can advise that its own investigation reveals that the University has not trespassed Mr. Coy or otherwise barred him from the University's property. Therefore, clearly, Bee Clean is attempting to hide behind a third party in an attempt to eliminate a supporter of SEIU Local 2 from its work locations at the University.

The Union clarified this paragraph by providing further and better particulars that "on or about September 29, following the termination of Mr. Coy, a representative of the applicant spoke directly with a member of the University security department and was informed by that individual that Mr. Coy had not been banned or trespassed from the University's property." The Employer seeks information as to who the Union spoke to at the University to verify this information. The Union says it has provided enough information for the Employer to respond to the allegation.

Given how large the University is and the many personnel within its security department the Employer cannot easily ascertain who made this comment or when. It thus has limited ability to address the veracity of the Union's statement. It is entitled to this information in order to address this allegation and I direct the Union provide this information.

33. The meeting occurred behind closed doors and lasted for approximately one hour. Due to the language barrier between Ms. Berard and the affected employees, there was no translation of what Ms. Berard was communicating to the employees. The employees were then presented with a document to sign, which they did not understand, but which many felt compelled to sign in order to draw the meeting to a conclusion.

The Employer seeks information as to who was in the captive audience meeting and what was in fact alleged to have been signed at this meeting. The Union argues it has provided sufficient particulars for the Union to respond. It identified the captive audience meeting was led by Ms. Berard and she attempted to have them sign a document that was presented to the individuals at the meeting.

In conjunction with paragraph 32, this paragraph sets out the timing of the meeting, the location of the meeting, the duration of the meeting and who it was led by. The Employer can easily communicate with Ms. Berard as to what document she was asking the employees to sign. The document itself is evidence, rather than a particular. I am thus satisfied the Employer has enough information before it to adequately respond to this allegation. It knows who was involved and what the content of the discussion was. Whether there was inappropriate conduct that happened within this meeting can be responded to by the Employer based on the information it has at hand.

34. As noted in paragraph 4 above, SEIU Local 2 formally commenced its organizing drive on or around September 3, 2010. That organizing campaign quickly gained momentum and proceeded rapidly until Bee Clean began to engage in the most serious of the Code violations alleged. Much of Bee Clean's activities in that regard became most intense on or around September 23 and continuing.

The Employer seeks information as to when the certification drive got underway and how it gained momentum in order for it to address this paragraph.

Having reviewed the paragraph, the timeframe is already set out such that the Union started its activity on or around September 3rd and that much of the alleged illegal activity occurred around September 23rd. Thus the Employer has enough information at hand to understand the certification drive lasted approximately three weeks and can proceed accordingly. Nothing further is required from the Union in this regard.

Summary

[10] The Board is satisfied the Union does not need to provide further and better particulars of any of the paragraphs save and except paragraph 28 wherein it must provide the name of the individual it spoke to at the University of Alberta security department.

[11] The Union has until Monday, November 1, 2010 to provide further and better particulars to paragraph 28. Thereafter the Employer shall provide and file its response by Friday, November 5, 2010. This also confirms a Resolution Conference is scheduled with the parties for Monday, November 22, 2010, commencing at 9:00 a.m. in the d'Esterre Room. The Chair also discussed setting aside three full weeks of hearing dates with the parties. I now understand the following dates have been agreed to for the hearing into the allegations: December 20, 21, 2010; February 7 to 11, 2011; February 14 to 18, 2011 and February 22 to 25, 2011.

[12] Lastly I wish to make note of the use of email in making submissions or responses to the Board. In this regard, I specifically note the initial request for further and better particulars was sent to the Board's general email box. This was not done in compliance with the Board's Rules (Rules of Procedure Rule 11) relating to service on the Board and other parties. Effective

service must be done in compliance with this Rule. While the use of email and other forms of electronic communication is becoming more prevalent, at present, there is no adequate backup to ensure information communicated in this fashion is actually obtained and read by the party to whom it is sent. Indeed there have been times when recipients have been ill or otherwise engaged such that the email and its attachments are not opened properly if at all. Additionally even if documents of this kind are sent directly to a Board officer, there is no guarantee the information will be reviewed by a Board officer or anyone from the Board in a timely fashion due to other activities. It is for this reason the Board insists on the parties providing letters to the Board either by mail, courier or fax which can then be physically seen and dealt with by Board staff. Further, unless otherwise directed specifically by the Board Chair or Board officer, all correspondence must be dealt with in compliance with the Board's Rules in regard to appropriate service.

[13] I encourage the parties to actively work together in an effort to resolve the dispute in its entirety or reach agreements as to facts so as to reduce the hearing time and witnesses required.

Mark L. Asbell, Q.C.
Chair