

BRITISH COLUMBIA LABOUR RELATIONS BOARD

AVISCAR INC.

-and-

BUDGETCAR INC.

-and-

AVIS BUDGET CAR RENTAL CANADA, ULC

(the "ULC")

-and-

CANADIAN OFFICE AND PROFESSIONAL EMPLOYEES UNION, LOCAL 378

("MoveUP")

-and-

TEAMSTERS LOCAL UNION NO. 213

("Teamsters")

PANEL: Brett Matthews, Vice-Chair
APPEARANCES: Eleni Kassaris, for Aviscar Inc., Budgetcar
Inc., and the ULC
Allan E. Black, Q.C., and Gall Levit for
MoveUP
Bryan Savage, for Teamsters

CASE NO.: 2020-000248

DATE OF DECISION: November 17, 2020

DECISION OF THE BOARD

I. **NATURE OF APPLICATION**

1 In *Aviscar Inc.*, 2020 BCLRB 96 (the "*Merits Decision*") I declared, pursuant to Section 38 of the *Labour Relations Code* (the "Code"), that Aviscar Inc. and Budgetcar Inc. (collectively the "Employer") constitute one employer for the purposes of the Code. I reserved jurisdiction to determine what remedies should be issued beyond that declaration.

2 The parties have attempted to resolve, between themselves, what would constitute an appropriate remedy, and have engaged the services of the Board's Special Investigating Officers for that purpose. Their attempts were unsuccessful. Consequently, it falls to me to determine what remedies beyond a declaration should be issued.

II. **BACKGROUND**

3 The background to this matter is set out at length in the *Merits Decision*. For the purpose of this decision I will set out only those facts relevant to remedy.

4 MoveUP is certified to represent employees of Aviscar Inc. in a unit (the "MoveUP Unit") comprised of:

employees at and from 757 Hornby Street, Vancouver, the Vancouver International Airport, Richmond, 3820 McDonald Road South, Richmond, and the Victoria International Airport, Sidney, BC, including lead shuttlers and shuttlers at and from the Vancouver International Airport, Richmond, BC

5 Teamsters are certified to represent employees of Budgetcar Inc. in a unit (the "Teamsters Unit") composed of:

employees except janitorial and property maintenance, and office staff in the geographical area of the Lower Mainland which is bounded by Powell River on the North, the International Border on the South, the Township of Hope on the East, but excluding Vancouver Island on the West.

6 The MoveUP Unit includes approximately 154 employees. The Teamsters Unit includes approximately 54 employees.

7 Additionally, in the *Merits Decision*, I found: the Employer's corporate structure provides the possibility to move work between Aviscar Inc. and Budgetcar Inc. such that collective bargaining rights might be eroded (para. 120); the human resources and labour relations decisions of Aviscar Inc. and Budgetcar Inc. are made jointly as part of a single operation (para. 122); Utility Agents, whether employed by Aviscar Inc. or by

Budgetcar Inc. perform the same work on the same vehicles, often from the same locations (para. 124); Shuttlers work on both sides of the Employer's operation, and the Employer could, and likely would, decide whether to hire any new Shuttler it might require into the Teamsters Unit or MoveUP Unit in part based on the relative financial obligations in the two collective agreements (para. 126).

8 Furthermore, I found there exists not merely the possibility that the Employer could make decisions which erode the integrity of one or the other bargaining unit, but a real and significant likelihood that it will do so (para. 127).

9 I found that to allow both the Teamsters collective bargaining relationship and the MoveUP collective bargaining relationship to persist in their current form will very likely lead to intolerable industrial instability (para. 128). I noted specifically that I shared the concerns raised by MoveUP about leapfrogging and whipsawing during collective bargaining as between the two units (*ibid*).

III. POSITIONS OF THE PARTIES

10 MoveUP asks for the following remedies:

- It asks that I amend the name of the Employer on the MoveUP certification to:

Aviscar Inc. and Budgetcar Inc. Budgetauto Inc. and Avis Budget
Car Rental Canada, ULC, operating as Avis Budget Group

- It asks that I amend the MoveUP certification to include all employees employed in the Teamsters Unit at and from the Vancouver International Airport except those employees excluded by the Code;
- It asks that I cancel the Teamsters certification;
- It asks that I amend the MoveUP certification to add the phrase "and 3840" after the address "3820" in the bargaining unit description; and
- It asks that I allow representatives of the Employer and representatives of MoveUP to meet to discuss and resolve the integration of the bargaining unit employees into one bargaining unit and to rationalize the provisions of the two collective agreements. It asks that, I retain jurisdiction to make any final order in this regard if the Employer and MoveUP are unable to reach agreement.

11 MoveUP says that given my findings in the *Merits Decision* there can be only one bargaining agent. It says that, in light of the significantly larger complement of employees in the MoveUP Unit as compared to the Teamsters Unit, MoveUP should be that bargaining agent, and there is no need for the Board to order a representation vote.

12 MoveUP accepts that, in fashioning a remedy in circumstances such as these, the Board should strive to preserve employee choice of bargaining agent as far as is

reasonably possible, but it says it must still be possible to draw a rational and defensible line around the resulting bargaining unit or units. It says that, in light of the degree of overlap and integration of duties, there is no rational or defensible line that can be drawn around either of the existing bargaining units.

13 MoveUP says that a vote is not necessary because it is only when the intermingling of bargaining units calls into question majority support that the Board will order a vote. It says its membership comprises about 75% of the employees of the intermingled unit it is proposing.

14 The Employer agrees with the analysis offered by MoveUP and agrees that the remedies sought by MoveUP should be ordered. It says that to continue with two separate units, in the circumstances of this case, will cause it considerable hardship.

15 Teamsters oppose the remedies sought by MoveUP and the Employer. They say the Board should vary the two certifications into a single poly-party certification. Teamsters say I should order that Teamsters and MoveUP enter into a poly-party constitution and that the resulting Teamsters/MoveUP poly-party association should be certified as the bargaining agent for the combined unit.

16 Teamsters note they have also applied to the Minister of Labour pursuant to Section 41 of the Code to direct the Board to determine if a Joint Council of Trade Unions would be appropriate in these circumstances.

17 Teamsters say that I have jurisdiction to make the order it requests, and that I should do so because, in the circumstances, that would constitute the least intrusive means to remedy the industrial instability concerns identified in the *Merits Decision*.

18 Teamsters cite *Kelly Douglas & Company*, BCLRB No. 8/74, [1974] 1 Can LRBR 77 ("*Kelly Douglas*") for the proposition that special weight must be given to the fact that there is an identifiable group of employees who chose the Teamsters as their bargaining agent, and that the Teamsters bargained successfully on their behalf. In *Kelly Douglas* the board explained "[t]hat choice should be preserved as far as is reasonably possible": p. 84.

19 Teamsters further cite *BC Rail*, BCLRB No. B287/99 (Leave for reconsideration of BCLRB Nos. B131/98 and B268/98) ("*BC Rail*") for the principle that the Board should adopt the least intrusive approach available when attempting to restore appropriateness through the alteration of existing bargaining structures: *BC Rail*, para. 25. Teamsters quote from *BC Rail* as follows:

The least intrusive approach requires a panel to address the current inappropriateness in a manner that disturbs, only to the extent necessary, the parties pre-existing bargaining rights and relationships. The critical requirement is that the inappropriateness be remedied. The least intrusive approach does not treat the existing bargaining structure as "sacrosanct" If, as in *Pacific Press* [BCLRB No. B76/98], a comprehensive restructuring is required to

remedy the inappropriateness, then that restructuring is the least intrusive remedy in that instance. ... (*ibid*)

20 Teamsters say the reason for this policy of adopting the least intrusive remedy available is aptly set out in *MacMillan Bloedel Ltd. (Alberni Pulp and Paper Division)*, BCLRB No. 393/84, (1985), 8 CLRBR (NS) 42 ("*Alpulp*") from which Teamsters quote as follows:

... No bargaining unit determination, however sound the labour relations policy underlying that determination may be, can guarantee healthy and acceptably stable labour relations. The quality of any collective bargaining relationship depends, in large measure, on the parties involved in that relationship and the economic and social climate within which those parties interact. The Board cannot simply presume that its intervention in an existing bargaining relationship and its reorganization of the structure upon which that relationship is based will have a positive effect. (p. 58)

21 Teamsters note that, while I found in the *Merits Decision* that allowing the MoveUP Unit and the Teamsters Unit to continue in their current form is likely to lead to intolerable industrial instability, I did not find that this instability could only be remedied by a comprehensive restructuring. Teamsters say the industrial instability identified in the *Merits Decision* can be remedied through the implementation of a poly-party or a council of trade unions, while still allowing both unions to maintain a bargaining relationship.

22 Teamsters ask the Board to implement a single bargaining unit made up of both Teamsters and MoveUP members governed by the following principles:

1. A constitution that would abide by majoritarian principles.
2. Teamsters and MoveUP continue to represent the employees who were in their previous bargaining units.
3. New hires to replace an employee in the resulting unit will be represented by the same union as the employee they replace.
4. Other new hires will be assigned to be represented by either Teamsters or MoveUP on a "1 for 1" basis.
5. There shall be a single seniority list.
6. There shall be a single collective agreement.

23 Teamsters attach to their submissions a draft poly-party constitution.

24 Teamsters say that this structure would remedy the Board's concerns with the existing bargaining unit structure and, moreover, would be the least intrusive means to do so.

25 MoveUP in its reply submissions says it wishes to be clear that it does not agree to "join in an application" for a poly-party union as is required by Section 20 of the Code. It says that, in the absence of MoveUP's consent, the order sought by Teamsters would be unprecedented and contrary to the Code's provisions.

26 MoveUP objects to Teamsters' proposition that the Board has jurisdiction to order a poly-party certification. Moreover, MoveUP says a poly-party unit will not remedy the Board's concerns about ongoing industrial instability. MoveUP says, for example, that under a poly-party certification there would be ongoing conflict over which union's member would do which work, and which union's members would be recalled from layoff when work accelerates, or laid off in the event of a further downturn in work.

27 The Employer, in its reply, similarly objects to the Teamster's proposed remedy. Like MoveUP, the Employer says the Board lacks jurisdiction to impose a poly-party bargaining relationship without the consent of both unions. Moreover, the Employer says it cannot be that the least intrusive remedy involves creating a new certification and having two unions form a council to seek majority rule on everything. The Employer says that, under Teamsters' proposed remedy, despite Teamsters having only a quarter of the Employer's employees as members, Teamsters and MoveUP would appoint an equal number of the poly-party's officers and an equal number of representatives to negotiate with the Employer. The Employer says the Teamsters' proposal, rather than representing the least intrusive remedy, creates unnecessary complexity.

IV. ANALYSIS AND DECISION

28 At the outset, I note that in order for the Board to engage with Section 41 of the Code it requires a Ministerial direction to do so. I appreciate that Teamsters have applied to the Minister for such a direction, but that direction has not been provided. Consequently, I have not considered whether a council of trade unions would be an appropriate bargaining agent for a unit of the Employer's employees.

29 I accept that, in fashioning a remedy I should be mindful to preserve employee choice of trade union as far as is reasonably possible: *Kelly Douglas*. I further accept that I should strive to implement the least intrusive intervention sufficient to remedy the industrial instability concerns identified in the *Merits Decision: BC Rail*. However, if a comprehensive restructuring is required to remedy the inappropriateness identified in the *Merits Decision*, then that restructuring is the least intrusive remedy: *ibid*.

30 In considering remedies beyond the common employer declaration made in the *Merits Decision*, I should avoid intruding upon representational rights further than is necessary. I am mindful, however, that whatever remedies are implemented need to be sufficiently likely to overcome the intolerable industrial instability concerns which I identified in the *Merits Decision*, appreciating that the Board cannot presume that its

intervention in an existing bargaining relationship, and its reorganization of the structure upon which that relationship is based, will inevitably be successful or have a positive effect: *Alpulp*. In effect, I should apply the maxim that, where a scalpel is sufficient to remedy the malady, I need not use a sledgehammer.

31 To that end, I accept that the remedial intervention sought by MoveUP and the Employer is closer to a sledgehammer than it is to a scalpel. In the words of *BC Rail*, it contemplates a comprehensive restructuring of the collective bargaining relationships pertaining to the Employer. But, for the reasons which follow, I find that, in comparison to the remedial intervention proposed by MoveUP and the Employer, the remedial intervention proposed by Teamsters is, not a scalpel, but an even larger sledgehammer.

32 Both the remedial intervention proposed by Teamsters, and that proposed by MoveUP and the Employer, contemplate a comprehensive restructuring of existing bargaining relationships, such that a single bargaining unit is created where presently there are two. I am satisfied that a single unit of the Employer's unionised employees is sufficiently likely to alleviate the industrial instability concerns identified in the *Merits Decision*, which largely arise from the intermingling of employees in the MoveUP Unit and the Teamsters' Unit in the context of a single integrated Employer operation.

33 No party has proposed a more surgical restructuring of the existing collective bargaining relationships and, bearing in mind the warning issued in *Alpulp* (that the Board cannot presume its interventions will be effective or that they will have a positive effect), I am not prepared to fashion one out of whole cloth.

34 Consequently, I find the MoveUP Unit and the Teamsters' Unit should be consolidated into a single bargaining unit (the "Broader Unit").

35 The remaining question is the identity of the bargaining agent for the Broader Unit.

36 I am not satisfied that I should substitute a newly created poly-party association as bargaining agent for the two unions who represent the Employer's employees.

37 The Code, in Section 20, provides for the possibility that:

[t]wo or more trade unions claiming to have together as members in good standing a majority of employees in a unit appropriate for collective bargaining may join in an application under this Part, and the provisions of this Code relating to an application by one trade union, and all matters or things arising from it, apply to the application and those trade unions as if one trade union were applying.

38 When two or more unions make a successful application pursuant to Section 20 of the Code, the association of trade unions which results, commonly called a poly-party, becomes the "trade union" with exclusive bargaining agency for the unit applied for. The Board in *Columbia Hydro Constructors*, BCLRB No. B36/94 explained:

The definition of trade union in Section 1 of the Code "includes an association or council of trade unions...". ... The two or more trade unions who combine, form, or associate together under Section 20 therefore meet the definition of "trade union" and acquire the exclusive bargaining authority set out in Section 27. ... The polyparty union now has a separate existence as a bargaining agent under Section 20; it, and it alone, has full authority to bargain. ... (p. 33)

39 Presently, both MoveUP and the Teamsters are bargaining agents for two separate groups of the Employer's employees. Each of those employee groups has, on the basis of the majoritarian principle, indicated that they wish to be represented by their respective union as their bargaining agent. The Teamsters' proposal requires that I deprive *all* of the Employer's unionized employees of their choice of bargaining agent and substitute instead a third union – the poly-party union Teamsters urge me to create – as bargaining agent for a combined unit, even while MoveUP – bargaining agent for roughly three quarters of the affected employees – opposes that outcome.

40 Moreover, the Teamsters' proposed remedial intervention would require that I force MoveUP, against its will, to contract with the Teamsters, enter into a constitution, and form a newly created poly-party association with the Teamsters. I am not persuaded that such an arrangement will contribute to productive labour relations.

41 I am satisfied that the Teamsters' proposed remedial intervention contemplates comprehensive restructuring of existing bargaining rights, and constitutes a severe intrusion into the bargaining rights pertaining to the Employer's employees. I find I am able to order a less intrusive remedial intervention that is sufficiently likely to cure the industrial instability concerns identified in the *Merits Decision*. Consequently, whether or not I have jurisdiction to order that parties enter into a poly-party association, I decline to do so in these circumstances.

42 Rather, I find that the principle of employing the least intrusive means to remedy industrial instability caused by intermingling of employees requires that the bargaining agent for the Broader Unit should be one of the two trade unions who presently have representation rights for employees of the Employer.

43 I accept that, on the present facts, the bargaining agent for the Broader Unit should be MoveUP, being the bargaining agent for the significantly larger of the two existing bargaining units. In these circumstances, a vote is unnecessary to determine the bargaining agent. The Teamsters Unit and the MoveUP Unit are not reasonably proportionate in size: *Western Professional Film Laboratories Ltd.*, BCLRB No. 22/86 (Leave for reconsideration denied, BCLRB No. 155/86) cited in *To-Market Services Limited*, BCLRB No. B71/95. Rather, approximately three quarters of the members in

the Broader Unit are presently in the MoveUP Unit, while approximately a quarter are presently in the Teamsters Unit. I am satisfied, therefore that certifying MoveUP as bargaining agent for the Broader Unit is likely to be representative of the wishes of the majority of employees in that unit.

CONCLUSION

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Consequently, I make the following orders and directions:

1. I order that that the MoveUP certification be amended as follows:
 - a. The name of the employer will be:

Aviscar Inc. and Budgetcar Inc. Budgetauto Inc. and Avis Budget Car Rental Canada, ULC, operating as Avis Budget Group;
 - b. The bargaining unit description shall read:

employees at and from 757 Hornby Street, Vancouver, the Vancouver International Airport, Richmond, 3820 and 3840 McDonald Road South, Richmond, and the Victoria International Airport, Sidney, BC, including lead shuttlers and shuttlers at and from the Vancouver International Airport, Richmond, BC
2. I order that the Teamsters certification be cancelled;
3. I direct that representatives of the Employer, MoveUP, and Teamsters meet to discuss, and to attempt to resolve, the integration of the MoveUP Unit and the Teamsters Unit into the Broader Unit. Once again, I retain jurisdiction to make any final order in this regard if the parties are unable to reach agreement.

LABOUR RELATIONS BOARD



BRETT MATTHEWS
VICE-CHAIR