

BRITISH COLUMBIA LABOUR RELATIONS BOARD

FORTISBC INC. ("FortisBC Electric") AND FORTISBC
ENERGY INC. ("FortisBC Gas")

(together the "Employers")

-and-

CANADIAN OFFICE AND PROFESSIONAL EMPLOYEES
UNION, LOCAL 378

("MoveUP" or the "Union")

-and-

INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, LOCAL 213

("IBEW")

PANEL: Karen Jewell, Vice-Chair

APPEARANCES: Peter A. Gall, Q.C., for the Employers
Jim Quail, for MoveUP
John MacTavish for IBEW

CASE NO.: 2020-000328

DATE OF DECISION: November 16, 2020

DECISION OF THE BOARD

I. **NATURE OF APPLICATION**

1 The Employers apply pursuant to Sections 2, 38, 139 and 142 (the "Application") of the *Labour Relations Code* (the "Code") for orders declaring that:

- a. FortisBC Gas and FortisBC Electric are a common employer for the purposes of the Code in relation to their MoveUP bargaining units;
- b. these MoveUP bargaining units, which cover office, clerical, technical or administrative employees of FortisBC Gas and FortisBC Electric, be combined into a single bargaining unit; and
- c. the resulting single bargaining unit be covered by the draft Amalgamated Collective Agreement appended to the Application until the expiration of its term on June 30, 2023.

2 MoveUP opposes the Application. However, if the Board is disposed to grant a common employer declaration, MoveUP says the two existing separate bargaining units should be maintained. If the Board is disposed to consolidate the two units, MoveUP agrees that the draft Amalgamated Collective Agreement should apply.

3 MoveUP further submits that if the common employer declaration is made and the bargaining units are consolidated, the description of the consolidated unit should be as follows:

All employees employed in British Columbia, excluding those in customer service centres,

And those excluded by the Code, employed by

FortisBC Energy Inc., 16705 Fraser Highway, Surrey, BC, V4N 0E8 and FortisBC Inc., 100-1975 Springfield Road, Kelowna, BC, V1Y 7V7, who are declared to constitute one employer of these employees for the purposes of the Labour Relations Code, pursuant to Section 38 of the Code.

4 MoveUP confirmed that the proposed bargaining unit description is not intended to modify the scope of MoveUP's representational rights but rather to capture their existing scope reflecting the impact of a common employer declaration. The Employers agree the bargaining unit description captures the desired intent, which is the *status quo* in terms of the scope of inclusions in a new combined unit. MoveUP and the Employers agree the proposed bargaining unit description also protects the IBEW bargaining rights and units.

5 The IBEW takes no position on the Application, given that neither the Employer nor MoveUP is seeking to encroach on the IBEW's bargaining rights.

II. BACKGROUND

6 I find the relevant facts underlying this application are not in dispute.

7 FortisBC Gas and FortisBC Electric are commonly owned and jointly managed
companies, with substantially integrated operations. They are both wholly owned
companies of Fortis Inc., and part of the FortisBC group of companies.

8 For regulatory reasons, these two sister utilities cannot be combined into a single
corporate entity, but for all practical purposes they operate as an integrated whole,
though that has not always been the case. Up until 2007, these two enterprises were
separately owned and operated. In 2007, the FortisBC group of companies purchased
FortisBC Gas (then called Terasen Gas) which was an unrelated company. After the
2007 purchase, FortisBC Electric and FortisBC Gas continued to be separately
managed.

9 Starting in 2010, the management of the two entities was progressively merged
and it is now wholly integrated. This was and is intended to allow the two operations to
operate in an integrated manner from an administrative and technical perspective, by
eliminating duplication and allowing for cross-over of personnel to provide administrative
and support services to both utilities. In furtherance of this goal, FortisBC and MoveUP
discussed a reconfiguration of the MoveUP bargaining units to rationalize the collective
bargaining structure.

10 The first step was to take certain distinct administrative work performed within
both operations – the call centre function – and establish a large department and a
single MoveUP bargaining unit which provided these services for both entities. MoveUP
notes the process leading to the creation of this centre arose from the Employers'
predecessor's decision to pursue the repatriation of work that had previously been
contracted out. This 2012 amalgamation of the call centre operations of the two utilities
into a single voluntarily recognized bargaining unit was not mutually conceived as a step
towards the eventual amalgamation of the remainder of the existing bargaining units. In
fact, it did not advance the consolidation of MoveUP bargaining units of FortisBC
employees into one, but rather maintained three distinct units (Move-UP Customer
Service Centre bargaining unit; MoveUP Electric bargaining unit; and MoveUP Gas
bargaining unit).

11 According to the Employers, the second step was to merge the two
administrative and technical bargaining units into a single bargaining unit. Each of
FortisBC Electric and FortisBC Gas currently has a MoveUP administrative and
technical bargaining unit defined as "employees in any phase of office, clerical,
technical, administrative or related work and including gas controllers, field workers
employed by the Company (such as representatives, salespersons, engineering survey
persons, safety inspectors, construction inspectors, who are mentioned by way of
example only and not to limit the generality of the term "field workers") but excluding
those field workers represented by IBEW, Local 213".

12 MoveUP says a meeting was held on November 23, 2015 where the Employers inquired whether MoveUP would consider hybridizing certain "IT" positions to permit cross-jurisdictional work between the Union's bargaining units. MoveUP responded that it would need a more complete written proposal or business plan before it would discuss the issue. Such a proposal or plan was not received.

13 The Employers approached MoveUP again in May 2018 during preparations for electric utility bargaining, asking the Union whether it would entertain a "roll-over" collective agreement with a view to facilitating discussion and possible amalgamation of the two units.

14 These discussions resulted in the preparation of a single Amalgamated Collective Agreement for a single bargaining unit. However, in a recent vote of MoveUP bargaining unit members, the proposed amalgamation was turned down. The Union notes that voting followed an extensive program of communications and discussions with the members, and the Union went to considerable lengths to ensure that the members had an opportunity to vote.

15 As a result, FortisBC Gas and FortisBC Electric are now applying for a common employer declaration to achieve the amalgamation of the MoveUP administrative and technical bargaining units into a single bargaining unit. The Employers submit this is necessary from a collective bargaining perspective to facilitate operational integration of the merged operation (and thus to achieve efficiencies, which is an expectation of regulated utilities), and thereby to eliminate the obstacles to harmonious labour relations caused by having to negotiate and administer two collective agreements covering the same work.

16 The Employers submit it is important to stress that this is not for the purpose, and nor will it have the result, of reducing the employee compliment. Indeed, it is the Employers' expectations the amalgamation will result in some increase in the employee complement. Additionally, the Employers say the application will have no effect on the other bargaining units of FortisBC Gas and FortisBC Electric employees. MoveUP says it intends to hold the Employers to these commitments in the event the application is granted.

III. POSITIONS OF THE PARTIES

17 The Employers submit the MoveUP bargaining units should be consolidated into a single bargaining unit in order to rationalize the bargaining relationship to reflect the current reality of FortisBC's integrated operations and to facilitate orderly and efficient labour relations between the parties. The Employers submit the existence of two bargaining units has significant detrimental impacts on the parties, including:

- a. Undermining the Employers' ability to operate their integrated business in the most efficient and cost-effective manner and to optimize the benefits of their otherwise highly integrated operations;

- b. Causing detrimental impacts for employees in terms of reduced employment and development opportunities and job satisfaction;
- c. Difficulties in administering the collective agreements which no longer reflect the reality of FortisBC's integrated business; and
- d. Unnecessary and avoidable labour relations disputes, grievances and other difficulties in the relationship between the parties.

18 The Employers note that only a fraction (less than 30%) of the employees eligible to vote on the amalgamation cast a ballot, and only 16% voted against amalgamation. In the Employers' view, this does not demonstrate majority opposition amongst the affected employees to amalgamation. The Employers submit the Board has always held that employee wishes cannot and should not be determinative of bargaining unit structure.

19 The Employers submit the factors in *Island Medical Laboratories Ltd.*, BCLRB No. B308/93 (Leave for Reconsideration of IRC No. C217/92 and BCLRB No. B49/93), ("*IML*") confirm that the amalgamated bargaining unit is an appropriate bargaining unit. It says the *IML* factors are either neutral or support amalgamating the bargaining units for the purposes of promoting orderly and efficient negotiation and administration of the collective agreement. As well, the Employers submit the Board has established a presumption in favour of single bargaining units for integrated operations.

20 The Union agrees the key issue in this case is whether there is a labour relations purpose to justify a common employer declaration, noting the Employer's arguments in this respect rely on a further order consolidating the two existing bargaining units and submitting that a common employer declaration in itself would not achieve any of the purported benefits of the Application. The Union submits the Application stands or falls on the merits of consolidation.

21 The Union points out that the regulatory framework requires that each utility must account for any services or benefits it receives from the other and they are required to maintain a border between the two operations, at least in terms of financial accounting and rate setting. This reality presents a conundrum to the Employers if they seek expanded efficiencies of scale while maintaining a safe, reliable, and reasonably-priced services with cross-subsidization. The Union submits that within the perspective of the Utilities Commission, the Employers have developed sufficient strategies to reconcile the drive for efficiencies with the need to maintain financial separation, through these regulatory solutions and there is no compelling reason for the Board to intervene.

22 MoveUP submits the Employers have not argued that the current configuration of separate bargaining units is not appropriate for collective bargaining, as has proceeded between the Union and the Employers for many decades. The Union does not dispute that a consolidated bargaining unit would also be appropriate for bargaining. MoveUP submits even if the Board is persuaded that a single consolidated unit would be the most appropriate unit for bargaining, that is not in itself a conclusive basis for

consolidation and there is no compelling justification on the basis of appropriateness to disturb the existing configuration of two well-established bargaining units.

23 The Union submits that even though the Board has often stated that employee wishes are not determinative in matters of bargaining unit configuration, this does not mean that they should not be given weight. While not the only, and not the predominate factor, the Union submits employee wishes nonetheless remain a factor and they may properly be taken into account and given "fuller scope within its constitutional context".

24 In reply the Employers say it is clear from the jurisprudence that the wishes of the majority of a small number of employees who voted on the consolidation of the two units cannot override the significant collective bargaining reasons for the consolidation of the two units in the circumstances of this case. The Employers reiterate that the continuing existence of two bargaining units within an integrated operation presents significant collective bargaining problems and necessitate the consolidation of these units. The Employers submit that the wishes of employees cannot be a significant factor in determining the appropriate scope of a bargaining unit. The Employers also dispute the Union's submissions regarding employee Charter rights.

IV. ANALYSIS AND DECISION

25 Under Section 38 of the Code, the Board can declare two entities to be a common employer for labour relations purposes to further the objectives of the Code. The parties agree there are four criteria for the issuance of a common employer declaration:

- i. two or more entities carrying on business;
- ii. the entities are under common control or direction;
- iii. the entities are engaged in a related or associated activity; and
- iv. there is a valid labour relations purpose to be served by making a common employer declaration.

26 MoveUP does not take issue with the first three criteria being met. There are two separate corporations, FortisBC Electric and FortisBC Gas. The two businesses are wholly owned subsidiaries of FortisBC, are integrated from an operational standpoint, and are commonly managed by an integrated management team. Both businesses are involved in the activity of providing energy products to customers in British Columbia.

27 The parties differ with respect to whether there is a valid labour relations purpose to be served by making a common employer declaration.

28 The Board has stated that a valid labour relations purpose for a Section 38 declaration is to rationalize bargaining unit descriptions and ensure orderly negotiations and administration of a collective agreement. In *P. Gamache & Sons Logging Ltd. 228100 B.C. Ltd. Triple T Contracting Ltd. And Newco Logging Ltd.*, BCLRB No.

B287/94 the Board stated: "the purpose of Section 38 is not only to protect existing bargaining rights but also to promote other labour relations purposes" including "to rationalize the descriptions of the bargaining unit" and "to ensure a more orderly form of negotiation and administration of a collective agreement", p. 8.

29 Similarly, in *CSH Hampton House Inc. and CSH Carrington House Inc.*, BCLRB No. B67/2011, the Board held as follows:

In *Ferraro's Limited*, BCLRB No. B132/97 the Board stated:

The Board has determined previously that rationalizing bargaining unit descriptions and ensuring a more orderly form of negotiations and administration of a collective agreement are valid labour relations purposes: *P. Gamache & Sons Logging Ltd.*, *supra Granville Island Hotel*, *supra*, and *The Arts Club of Vancouver*, *supra*.

We conclude that there is a valid relations purpose for a Section 38 declaration in these circumstances in order to have a rational collective bargaining structure conducive to effective collective bargaining. (paras. 48-49)

I agree with these comments. Negotiations for a renewal collective agreement at Hampton and a first collective agreement at Carrington may be occurring simultaneously. Chartwell conducts collective bargaining on behalf of both Hampton and Carrington with the Union. In *Baywood Enterprises Ltd. et al.*, BCLRB No. 161/74, [1975] 1 Canadian LRBR 173 at 180-181, the Board noted that the purpose of the common employer section of the Code was "to facilitate the resolution of labour relations issues which are clouded or confused by legal distinctions which are irrelevant to policy issues before the Board".

Accordingly, at this point, given that the same union enjoys collective bargaining rights with respect to both Carrington and Hampton which are under common control and direction and because the Union's variance application cannot be heard without the common employer declaration first being made, I find there is a valid labour relations purpose to the common employer declaration. (paras. 24-26)

30 More recently in *Sienna Baltic (Mariposa) Inc.*, BCLRB No. B115/2018 (Leave for Reconsideration of BCLRB No. B218/2017) the Board stated at paragraph 45:

We find the Remittal Decision correctly concluded that "the creation of broader based bargaining units can satisfy the requirement for a labour relations purpose" (para. 46).

31 In several common employer cases involving the need to rationalize bargaining units, the Board has gone on to consider the *IML* factors as part of the analysis for determining whether there is a valid labour relations purpose for the declarations sought. That is, whether there is a labour relations purpose has often turned on the outcome of the *IML* test to determine whether the amalgamated bargaining unit will be appropriate for collective bargaining: *Sienna Baltic, supra.*; *Metro-McNair Clinical Laboratories Limited Partnership (c.o.b. MDS Metro Laboratory Services)*, BCLRB No. B210/2000; and *Vancouver Airport Centre Ltd.*, BCLRB No. B49/2013.

32 The Employers reviewed the *IML* factors and submitted that all are either neutral or in most cases support amalgamation of the bargaining unit for purposes of promoting orderly and efficient negotiation and administration of a collective agreement. MoveUP did not dispute that a consolidated bargaining unit would be an appropriate unit.

33 In the circumstances of this case, I find there is a labour relations purpose for issuing a common employer declaration and for amalgamating the two MoveUP bargaining units. This will rationalize the bargaining unit structure to enable the parties to engage in the orderly and harmonious negotiation and administration of a single collective agreement. This finding is further supported by the fact that no other union's representational rights will be affected, given the Employers are only seeking relief with respect to the two bargaining units represented by MoveUP. I am satisfied that the amalgamated bargaining unit is an appropriate unit for collective bargaining.

34 MoveUP has highlighted the steps the Employers have taken with respect to the cost accounting and integration of services under the BC Utilities Commission; however, that does not persuade me that the Employers' ability to fully integrate their services and operations is not hindered by having two separate bargaining units.

35 While I appreciate the vote demonstrates that some affected employees do not support amalgamation of the bargaining units, I am not persuaded their wishes should determine the outcome or preclude common employer and amalgamated bargaining unit declarations in the circumstances of this case. The circumstances otherwise support the Application: the same union will continue to represent all the affected employees, just in one bargaining unit instead of two. I am not persuaded the rationalization of the bargaining structure is inconsistent with their Code or *Charter* rights. I find there is a labour relations purpose for making the common employer declaration and other orders and declarations sought by the Employers.

V. CONCLUSION

36 The Application is granted for the reasons given above. I make the following declarations and orders:

1. FortisBC Gas and FortisBC Electric are declared to be a common employer for the purposes of the Code in relation to their MoveUP (COPE, Local 378) bargaining units;

2. The MoveUP bargaining units, which cover office, clerical, technical or administrative employees of FortisBC Gas and FortisBC Electric are to be combined into a single bargaining unit;
3. The resulting single bargaining unit will be described as:
 - a. "All employees employed in British Columbia, excluding those in customer service centres, and those excluded by the Code, employed by FortisBC Energy Inc., 16705 Fraser Highway, Surrey, BC, V4N 0E8 and FortisBC Inc., 100-1975 Springfield Road, Kelowna, BC, V1Y 7V7, who are declared to constitute one employer of these employees for the purposes of the *Labour Relations Code*, pursuant to Section 38 of the Code".
4. The resulting single bargaining unit will be covered by the draft Amalgamated Collective Agreement appended to the Application until the expiration of its term on June 30, 2023.
5. I remain seized of the file in the event of any difficulties in the administration of these declarations and orders.

LABOUR RELATIONS BOARD

A handwritten signature in black ink, appearing to read 'Karen Jewell', with a stylized, cursive script.

KAREN JEWELL
VICE-CHAIR