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## **Vertex Construction Services Ltd. (Re)**

Re: An application for reconsideration under s. 11(4) brought by Vertex Construction Services Ltd. affecting the International Union of Operating Engineers, Local Union No. 955 and the Construction Workers Union (CLAC) Locals 63 and 65 affiliated with the Christian Labour Association of Canada  
(Board File GE-03046)

Re: An application for reconsideration under s. 11(4) brought by the Construction Workers Union (CLAC), Locals 63 and 65, affiliated with the Christian Labour Association of Canada, affecting the International Union of Operating Engineers, Local Union No. 955 and Vertex Construction Services Ltd.  
(Board File GE-03046)

[1999] Alta. L.R.B.R. LD-073

[1999] A.L.R.B.D. No. 99

Board Files: GE-03046, GE-03046

**Alberta Labour Relations Board  
G.A. Lucas, Q.C., Vice-Chair**

August 3, 1999.

### **Appearances:**

No appearances mentioned.

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### LETTER DECISION

¶ 1 In its decision of March 16, 1999, the Board determined that a certification application filed by the International Union of Operating Engineers, Local Union No. 955 ("Local 955") on March 30, 1998, for the general construction operating engineers employed by Vertex Construction Services Ltd. ("Vertex"), was timely and that a purported collective agreement made between Vertex and the Construction Workers Union, Local 65 ("CLAC") was not a bar to that application. The Board also ruled that this purported collective agreement was of no force or effect because that agreement was negotiated at a time when CLAC was not a bargaining agent and also because the purported agreement was entered into in violation of the freeze imposed by section 145(1).

The Vertex reconsideration application

¶ 2 On March 29, 1999, Vertex applied to have the Board reconsider that decision. The basis of its reconsideration application was inconsistent findings by the Board which constituted substantial errors of fact and law. The Board had concluded, at pages 3 and 24 of its March 16th decision, that Vertex became a successor to TRE Technical Corporation ("TRE"), within the meaning of section 44, in February 1998, when it replaced TRE in connection with certain banking arrangements, workers' compensation, GST and so on. The Board arrived at that conclusion notwithstanding that there was no evidence of any formal transaction occurring between the two entities until they formally amalgamated on April 14, 1998.

¶ 3 On the other hand, the Board also concluded that the Union's March 30, 1998 certification application, for a unit of Vertex employees, was not the same or substantially the same as the Union's January 22, 1998 certification application, for a unit of TRE employees. That earlier certification application had been dismissed on February 13, 1998 for want of the 40% support. Vertex argued that the March 30th application should not have been accepted because 90 days had not elapsed from the dismissal of the earlier application and the Board had not consented to the later application being filed, before the expiration of 90 days, as required by section 55.

¶ 4 The basis on which the Board concluded the certification applications were not the same was that, despite the successorship, the applications involved two different employers who were, at the time, separate legal entities. As well, the Board suggested that Vertex should have raised the section 55 defence at the outset of the processing of the March 30th certification application and not waited until September 1998 to raise the argument.

¶ 5 Finally, the Board concluded that, for the purpose of section 145, the purported collective agreement made between Vertex and CLAC was to be construed as though TRE was a party to it. Therefore, since the agreement was entered into without the consent of Local 955, during the freeze period relating to Local 955's January 22nd application affecting the TRE employees, it violated section 145 and could not be a bar to Local 955's March 30th certification application affecting the Vertex employees. If the two employers could be one for this purpose then it stood to reason they should be one employer for purposes of section 55.

#### The CLAC reconsideration application

¶ 6 On April 6, 1999 CLAC also applied to have the Board reconsider the same decision insofar as that decision dealt with the purported collective agreement it had entered into with Vertex. It too claimed the decision contained substantial errors of fact and law.

¶ 7 More specifically, CLAC argued that Board erred in holding that a union must represent the employees at the time of negotiation in order to enter into a valid voluntary recognition collective agreement; it erred in rejecting CLAC's representation and ratification process and in finding that CLAC was not a bargaining agent when the collective agreement was entered into; and, it erred in finding that TRE breached section 145(1) and that this breach invalidated the collective agreement between Vertex and CLAC.

¶ 8 After Local 955 responded to the two applications, Vertex replied, in part, to that response.

¶ 9 On May 17, 1999, these applications came before an administrative panel of the Board (Lucas, Flannery, Haag) for determination as to whether the Board should grant a reconsideration hearing.

¶ 10 In our view, the arguments outlined by Vertex, based on the stated inconsistencies in the Board's earlier decision, may be capable of establishing grounds for reconsideration. Accordingly, we direct that this application be referred on to a reconsideration panel for further hearings upon the merits of the application.

¶ 11 We do not view the application by CLAC in the same manner. The earlier panel set out why it concluded that CLAC was not a bargaining agent, why CLAC's representation and ratification process was flawed, and why the purported agreement was not a collective agreement. The reconsideration application by CLAC raises those same issues and relies upon the same cases as it submitted to the earlier panel. The fact it disagrees with the decision made by that panel is not sufficient to support a reconsideration application.

¶ 12 We appreciate that CLAC does raise an argument, based on the earlier panel's findings with respect to the effect of section 145, that is the same as that raised in the Vertex application. However, the Board pointed out that its comments regarding section 145, as they related to CLAC, were, in effect, obiter comments. That is, it had already determined, on other grounds, that the purported collective agreement was of no force and effect. Therefore, that agreement would not be saved even if a reconsideration panel set aside the Board's findings with respect to section 145.

¶ 13 Accordingly, we summarily dismiss CLAC's application as being without merit. However, if it wishes to request intervenor status on Vertex's application, the reconsideration panel hearing that matter may decide to grant that status to it.

QL Update: 20000511

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