Date: 20050812

File: 140-2-25

Citation: 2005 PSLRB 98

Public Service Labour Relations Act

Before the Public Service Labour Relations Board

BETWEEN

LES TERRASSES DE LA CHAUDIÈRE INC.

Applicant

and

INTERNATIONAL UNION OF OPERATING ENGINEERS (STATIONARY), LOCAL 772, PUBLIC SERVICE ALLIANCE OF CANADA AND TREASURY BOARD (Public Works and Government Services Canada)

Respondents

Indexed as
Les Terrasses de la Chaudière v. International Union of Operating Engineers (Stationary), Local 772, Public Service Alliance of Canada and Treasury Board (Public Works and Government Services Canada)

In the matter of an application in respect of section 49 of the *Public Service Staff Relations Act*

REASONS FOR DECISION

Before: Ian R. Mackenzie, Vice-Chairperson

For the Applicant: Gary S. Rosen and Stuart S. Aronovitch, Counsel

For the Respondents: Shannon Blatt, for the PSAC, and Laurel A. Johnson, for the Treasury Board (PWGSC)

(Decision rendered based on written submissions.)

Application before the Board

[1] This is an application from Les Terrasses de la Chaudière Inc. made under section 49 of the *Public Service Staff Relations Act* (*PSSRA*). Les Terrasses de la Chaudière Inc. is the owner of the complex in Gatineau, Quebec, known as Les Terrasses de la Chaudière and was the property manager until the management agreement was revoked by Public Works and Government Services Canada (PWGSC), effective May 2, 2004, and the PWGSC took over the property management of the complex. Prior to the revocation, the property maintenance and management employees were unionized by the International Union of Operating Engineers (IUOE) (Stationary), Local 772, subject to a certification under the *Quebec Labour Code*. The PWGSC invited the employees to apply for positions with the federal public service and many of them were subsequently hired.

[2] The Public Service Alliance of Canada (PSAC) is the certified employee organization of employees engaged in property maintenance and management, and these employees, once hired, became part of this bargaining unit.

[3] In its application, the applicant seeks the following:

- A determination by the Board as to whether the PWGSC and/or the Treasury Board of Canada (acting as representative of Her Majesty in Right of Canada) was always the true employer of the unionized employees and whether the PSAC's certification under the *PSSRA* always applied to such employees.

- A determination as to whether there has been a transfer of jurisdiction within the meaning of section 49 of the *PSSRA*, and who is the certified bargaining agent for the employees.

- A determination as to which of the IUOE and the PSAC has the rights, privileges and duties in respect of the unionized employees, including notably any and all rights under any certification decisions and the collective agreement, including grievances filed by the IUOE.

- A declaration that the PWGSC and/or the Treasury Board of Canada (acting as representative of Her Majesty in Right of Canada) has replaced Les Terrasses de la Chaudière Inc. as the employer of the unionized employees under the collective agreement, and for all other legal purposes.

- That Les Terrasses de la Chaudière Inc. be replaced by the PWGSC and/or the Treasury Board of Canada (acting as a representative of Her Majesty in Right of Canada) as the designated employer under the certification relating to the group of employees.

- An Order that Les Terrasses de la Chaudière Inc. be replaced by the PWGSC and/or the Treasury Board of Canada (acting as representative of Her Majesty in right of Canada) as the named employer under the grievances.

[4] The IUOE was named as a respondent in the application, as well as the PSAC and the Treasury Board. However, the IUOE did not make any submissions. The grievances referred to in the application were grievances filed against les Terraces de la Chaudière Inc. by the IUOE on behalf of its members.

[5] On April 1, 2005, the *Public Service Labour Relations Act* (the "new *Act*"), enacted by section 2 of the *Public Service Modernization Act,* S.C. 2003, c. 22, was proclaimed in force. Pursuant to section 39 of the *Public Service Modernization Act*, the Board continues to be seized with this application, which must be disposed of in accordance with the new *Act*.

Summary of the evidence

[6] The applicant set out the following factual background for the application. The enumerated facts do not appear to be in contention. I have edited the factual submissions for style only; the full submissions are on file with the Board.

Les Terrasses de la Chaudière Inc. is the owner of three office towers that house the offices of various departments of the Government of Canada and a retail complex known as *Les Terrasses de la Chaudière*, located in Gatineau, Quebec.

The PWGSC is the lessee of the entire Chaudière Buildings as a result of a long-term lease agreement entered into with the previous owner of the Chaudière Buildings, namely Campeau Corporation ("Campeau"). The lease expires on June 30, 2010. Pursuant to the lease, the PWGSC is the sole tenant of the Chaudière Buildings.

Pursuant to the lease, the PWGSC undertook, *inter alia*, to operate and maintain the Chaudière Buildings. However, these duties were assigned back to the lessor pursuant to a management agreement, as set out more fully below.

In 1991, Les Terrasses de la Chaudière Inc. acquired the Chaudière Buildings and all rights associated with same, including Campeau's rights and obligations under the lease as well as certain other agreements detailed below.

In addition to the lease, Campeau and the PWGSC entered into a management agreement with a term from July 1, 1975, to June 30, 2010. Pursuant to the management agreement, it was agreed that Campeau would fulfill all of the PWGSC's obligations relating to the operation and maintenance of the Chaudière Buildings. Campeau and subsequently the applicant thus acted as the manager of the Chaudière Buildings.

For the purpose of providing the services to the PWGSC, as required under the management agreement, Campeau employed various employees, including a group of unionized employees, who were represented for the purposes of collective bargaining by Local 772 of the IUOE. Pursuant to a decision of the Office of the Labour Commissioner General of the Province of Quebec, dated September 25, 1978, the IUOE was certified under the *Quebec Labour Code* as the bargaining agent of the following group of employees:

> *All employees within the meaning of the Labour Code, with the exception of office employees:*
>
> *OF CAMPEAU CORPORATION*
>
> *Establishments: North Tower, East Tower and Center Tower*
>
> *Situated at: 15 Eddy Street, Hull, Quebec, Center Tower*

The IUOE and Campeau entered into a number of collective agreements governing the working conditions of the employees contemplated by the above-mentioned certification.

As mentioned above, in 1991 the applicant acquired the Chaudière Buildings and all rights associated with same, including the rights in and to the lease and management agreement; it thus acquired the business previously carried on by Campeau in connection with the Chaudière Buildings (the "business"). As such, the applicant replaced Campeau under the management agreement and thenceforth, with the consent of the PWGSC, continued providing the services required under such agreement.

For this purpose, the applicant continued to employ substantially all of the employees previously employed by Campeau in connection with the business, including substantially all of the unionized employees represented by the IUOE. As the successor to Campeau, the applicant ostensibly became bound by the terms of the above-mentioned certification and by the then applicable collective agreement. This was confirmed in a decision rendered by the Office of the Labour Commissioner General of Quebec on November 25, 1999. The applicant and the IUOE subsequently entered into a collective agreement effective July 1, 2002, to June 30, 2005.

The applicant operated the business from 1991 through to February 29, 2004, at which time the applicant's services under the management agreement were terminated by the PWGSC. During this period, the applicant provided the management and maintenance services required under the management agreement, and supplied the required personnel.

During this period, the bulk of the salaries of these persons was paid for by the PWGSC, which also closely monitored their work, among other things. The PWGSC had a full-time team on site, which oversaw the work of the applicant's local management. In addition, representatives of the Treasury Board of Canada would also direct the work of the applicant's personnel.

By letter dated November 4, 2003, the PWGSC notified the applicant that, effective as of midnight May 2, 2004, it would be cancelling and terminating the management agreement. In this connection, the PWGSC invoked Article 3.2 of the management agreement, which reads as follows:

> *3.2 Notwithstanding any other provisions to the contrary, either Party may prior to the termination date contemplated in Article 3.1 hereof, cancel and terminate this agreement for any reasons whatsoever, at its sole discretion, upon giving the other Party a one hundred and eighty day written notice. Upon the expiration of said delay, all the rights and obligations of the parties contained herein and resulting from these presents shall cease for the future.*

In the same letter, the PWGSC also notified the applicant that, effective February 29, 2004, it would be withdrawing all duties of the applicant as manager of the Chaudière Buildings and that it would be assuming such duties effective March 1, 2004.

In this connection, the PWGSC invoked Article 4.15 of the management agreement, which reads as follows:

> *4.15 Notwithstanding anything in this agreement to the contrary, the Crown reserves the right, by giving prior written notice to this effect to the Manager, to withdraw any duty of the Manager from its obligations contained herein. In such a case, the Manager shall be relieved of the responsibility of performing any such duty. The Management fees provided in Article 7 hereof shall not be affected by any such withdrawal of duty. Notwithstanding such notice, the Crown may re-impose such duty to the Manager by giving the Manager written notice to this effect. In such case, the Manager shall become responsible for such duty as of the date of such notice.*

The PWGSC also advised the applicant's employees that it would be assuming responsibility for services under the management agreement as of March 1, 2004, and invited them to apply for continued employment with the PWGSC. The PWGSC directly hired most of the employees, including, in particular, substantially all of the employees covered by the IUOE certification and by the collective agreement.

The applicant attempted, through various means, including notably negotiation and legal proceedings before the Federal Court of Canada, to retain the right to continue operating the business, but such efforts were unsuccessful.

The IUOE filed, as against the applicant, two grievances dated June 28, 2004, on behalf of its members. Pursuant to the first of these grievances, the IUOE claims from the applicant compensation in lieu of the notice of collective dismissal contemplated under the *Quebec Labour Standards Act*, on the basis that, allegedly, at least 10 of the employees were terminated by the applicant. The applicant has denied this allegation. The second grievance claims from the applicant compensation for sick days accumulated under the collective agreement, on the basis that the grievor was allegedly terminated by the applicant.

Summary of the arguments

[7] The initial submissions of the applicant were contained in the application. The Board determined that the hearing would proceed by way of written submissions. The Board invited further submissions after the decision rendered in an analogous case on March 11, 2005 (*Rostrust Investments Inc. v. Canadian Union of Public Employees, Local 4266-05, Public Service Alliance of Canada and Treasury Board (Public Works and Government Services Canada)*, 2005 PSSRB 1). I have edited the submissions for style only; the full submissions are on file with the Board.

[8] In addition, in a letter to the Board dated July 28, 2004, with regard to the application in *Rostrust Investments Inc.* (*supra*), counsel for the applicant noted that the submissions in that file applied *mutatis mutandis* to this application. Those edited submissions are contained in the *Rostrust Investments Inc.* decision (*supra*) and the full submissions are on file with the Board.

For the applicant

The IUOE was aware of the fact that the business was transferred to the PWGSC and that the PWGSC has directly hired substantially all of its members who were employed in connection with the business. However, the IUOE has done nothing to preserve its apparent rights as the bargaining agent of these employees or to ensure the transfer of its certification or the collective agreement to the PWGSC, which is clearly the sole employer and successor to the applicant. The IUOE has not filed any successorship application or taken any other measures to assert, vis-à-vis the PWGSC, its apparent rights as the certified bargaining agent of these employees, nor to protect its members' rights under the collective agreement, including the right to continued employment.

Furthermore, at all relevant times, the PWGSC (the Treasury Board of Canada) acted, in many important respects, as the true employer of the applicant's staff, both unionized and non-unionized. For example, the bulk of the salaries of these persons was paid for by the PWGSC, which also closely monitored their work, among other things.

As a result of the termination of the management agreement, PWGSC became the sole employer and successor to the Applicant, in particular, as regards the unionized employees and the collective agreement.

Given all of the foregoing, the operations of the business are governed by the provisions of the *PSSRA*.

It is further submitted that, in light of the facts mentioned above, the business was indeed covered by the provisions of the *PSSRA* even before its transfer to PWGSC, particularly during the period from 1991 to February 29, 2004. Also, given the role and duties of the applicant and previously of Campeau under the management agreement, the business was, during such period, at the very least a federal undertaking.

In any event, since, under the laws of Quebec, particularly the *Quebec Labour Code*, there does not exist the possibility for voluntary union recognition, the business could not have been governed by the provisions of the *Quebec Labour Code* or certified under provincial labour laws.

In light of these facts, the following issues, in particular, need to be determined:

- Has the IUOE certification been transferred to PWGSC?
- Were the unionized employees covered by the PSAC's certification prior to March 1, 2004, and, in particular, from 1991 to February 29, 2004, and/or are they now covered by such certification?
- Who, among the IUOE and the PSAC, has the right to act as the bargaining agent of the unionized employees, including the exclusive right to file and/or proceed with grievances on behalf of the employees?
- Who, among the IUOE and the PSAC, has the duty to represent the rights and interests of the unionized employees?
- Which collective agreement, if any, applies to the unionized employees?

Depending on the answers to these questions, the IUOE may have lost or may never have had the right to file or proceed with any grievance relating to the employment or termination entitlements, if any, of the employees, notably as they may arise from the transfer of the business to the PWGSC.

Indeed, if the PWGSC was the true employer of the unionized employees all along (i.e. from 1991 to February 29, 2004), the employees will have been covered by the PSAC's certification issued under the *PSSRA* during such period. In such event, the IUOE would never have had the right to represent the employees or to file the grievances, among other things.

Furthermore, as the applicant has been replaced by the PWGSC as the operator of the business, and since the PWGSC has become the sole employer of the unionized employees, the applicant believes that, as of March 1, 2004, it ceased to have any further duties or obligations toward the unionized employees, whether under the collective agreement or otherwise, and that the PWGSC acquired all such duties and obligations.

For the respondent, the Treasury Board (PWGSC)

Preliminary submission

The respondent requests that the Board dismiss, for want of jurisdiction, the application on a preliminary basis without the need for further processing or scheduling of a hearing in this matter, pursuant to rule 8(1) of the *P.S.S.R.B. Regulations and Rules of Procedure, 1993*.

The remedies sought by Les Terrasses de la Chaudière Inc. in its application reveal the true nature of the application. The application seeks relief that is beyond the jurisdiction of the Board.

Even if the facts alleged by the applicant are taken to be true, the applicant has not established a basis on which the Board could take jurisdiction or recognize that the applicant has standing before the Board under either section 49 or section 41 of the *PSSRA*.

Final submissions

It is the respondent's position that the Board should dispose of this application in exactly the same manner as it did in *Rostrust Investments Inc.* (*supra*).

A review of the two applications reveals that the situations are the same in form and substance. Indeed, in its letter to the Board dated July 9, 2004, in the Rostrust application, the applicant itself characterized the situations as "analogous":

> *We wish to advise you that we have received instructions from our client, Les Terrasses La Chaudière, Inc., which is part of the same group of companies as the Applicant in the present matter, to file a similar application with the Board with respect to an analogous situation in Gatineau, Quebec.*

The respondent submits that the nature of the remedies sought in the two matters is identical. Taking the facts as alleged by the applicant, the respondent submits that the basis on which the Board dismissed the application in *Rostrust Investments Inc.* (*supra*) are all present in the instant application, for example:

1. The Board is without jurisdiction over matters governed by the *Quebec Labour Code*, including the union certification, collective agreement and grievances.

2. The Board is without jurisdiction to determine whether the business is a "federal undertaking" under the *Canada Labour Code*.

3. Les Terraces de la Chaudière Inc. does not meet the definition of "employer" under the *PSSRA,* and therefore does not have standing to bring an application under section 41 of the *PSSRA.*

4. The facts do not constitute a "transfer of jurisdiction" as defined by the Board under section 49 of the *PSSRA.*

5. The *PSSRA* does not establish successor rights from a provincial employer to a federal Public Service employer.

6. Under the *PSEA*, the relevant employees were not employees of the federal Public Service until appointed, as defined in the *PSEA*.

It is the respondent's position that there is no basis upon which the Board could distinguish the applications such that a different result is warranted. The respondent submits that the application should be dismissed without an oral hearing.

For the respondent, the PSAC

Preliminary submissions

It is the position of the PSAC that the application by Les Terrasses is misfounded in both fact and law, and should be summarily dismissed by the Board. The PSAC's position is founded, *inter alia*, upon the following:

1. There has been no merger, amalgamation or transfer of jurisdiction concluded as between the IUOE and the PSAC, such as to attract the application of section 49 of the *PSSRA* or otherwise.

2. As the application flows in its entirety from the erroneous premise that a merger, amalgamation or transfer of jurisdiction has occurred, the application is accordingly unfounded in its entirety.

3. There is no mechanism for successorship of bargaining rights from provincial jurisdiction to the jurisdiction of the *PSSRA*. The Board is therefore without jurisdiction in this matter.

4. The indicia of a true employer relationship as between the former employees of Les Terrasses and the PWGSC/Treasury Board were not present during the period prior to March 1, 2004, and the PWGSC/Treasury Board was thus not the true employer of said employees prior to that date.

5. The application is brought in bad faith and for an improper purpose.

The PSAC submits that the application generally seeks relief and determinations that are beyond the jurisdiction of the Board. Without limiting the generality of the foregoing, the PSAC notes, as but one glaring example, that the applicant has asked this Board to "replace" Les Terrasses as the designated employer on a certification order issued by the Labour Commissioner General of Quebec. It is clearly beyond the jurisdiction of the Board to amend a provincial certification order. Further, that request appears to suggest to the Board that the operations of the PWGSC/Treasury Board at the Chaudière Buildings would still fall under provincial jurisdiction. That submission runs entirely contrary to the legal theory of the applicant to the effect that the operations were subject at all times to federal jurisdiction. That theory is ill-founded and denied by the PSAC.

In the respectful submission of the PSAC, the application of Les Terrasses, like that of *Rostrust Investments Inc.* (*supra*) is entirely without merit.

Reply submissions

For the applicant

The applicant maintains and reiterates the position and arguments expressed in its application in this matter. The applicant also respectfully submits that the position and arguments expressed by the other parties in this matter are ill-founded in fact and in law.

For the respondent, the PSAC

It appears clear from the April 1, 2005, submission of the applicant that it has elected not to respond to the Board's March 11, 2005, correspondence. The Board requested that the parties outline their positions "on the impact, if any, on the above-noted application of the aforementioned decision." The aforementioned decision is of course that in *Rostrust Investments Inc.* (*supra*).

In its letter of April 1, 2005, the applicant made no comment on the impact of *Rostrust Investments Inc.* (*supra*). Accordingly, there is nothing to which the PSAC can properly reply.

The PSAC therefore simply reiterates its submissions made to date and asks that the Board proceed without delay to dismiss the present application without conducting a hearing.

For the respondent, the TB (PWGSC)

The respondent has reviewed the applicant's submissions dated April 1, 2005, and notes that the applicant has failed to plead grounds upon which this matter could be distinguished from that addressed in the Board's decision in *Rostrust Investments Inc.* (*supra*). The respondent, therefore, has nothing further to add at this time.

Reasons

[9] This application is almost exactly the same as the application in *Rostrust Investments Inc.* (*supra*). As noted by counsel for the Treasury Board, the applicant has identified this as application "analogous". I also note that the applicant has used the same arguments in both applications. The only difference between the two applications is the provincial jurisdiction – in this case, it is the *Quebec Labour Code* that is at play whereas in *Rostrust Investments Inc.* (*supra*) it was the *Ontario Labour Relations Act*. I have concluded that this difference is not significant. The applicant made no submissions on the decision in *Rostrust Investments Inc.* (*supra*).

[10] I have concluded that the "contracting-in" of maintenance services does not constitute a transfer of jurisdiction under the *PSSRA*. The applicant alleges that its employees were always employees of the PWGSC, based on the control that the PWGSC exercised over these employees. I have concluded, based on the decision of the Supreme Court of Canada in *Canada (Attorney General) v. Public Service Alliance of Canada*, [1991] 1 S.C.R. 614 (commonly known as *Econosult*), that these employees were not employees of the Treasury Board until such time as they were appointed pursuant to the *Public Service Employment Act* (*PSEA*).

[11] The applicant has requested the following relief:

- A determination as to whether there has been a transfer of jurisdiction within the meaning of section 49 of the *PSSRA*, and who is the certified bargaining agent for the employees.

- A determination as to which of the IUOE and the PSAC has the rights, privileges and duties in respect of the unionized employees, including any and all rights under any certification decisions and the collective agreement, including grievances filed by the IUOE.

- A declaration that the PWGSC and/or the Treasury Board of Canada has replaced Les Terrasses de la Chaudière Inc. as the employer of the unionized employees under the collective agreement, and for all other legal purposes.

- That Les Terrasses de la Chaudière Inc. be replaced by the PWGSC and/or the Treasury Board of Canada as the designated employer under the certification relating to the group of employees.

- An Order that Les Terrasses de la Chaudière Inc. be replaced by the PWGSC and/or the Treasury Board of Canada as the named employer under the grievances.

[12] Part of the relief requested by the applicant includes replacing it with the Treasury Board as the employer under the IUOE collective agreement, the *Quebec Labour Code* certificate and the grievances. The certificate, collective agreement and grievances are all governed by the *Quebec Labour Code*. This Board is without jurisdiction over these matters.

[13] It is also suggested in the application that the maintenance operations were "a federal undertaking". This is an assertion not supported by any evidence. If a business is determined to be a "federal undertaking", the business is subject to federal rather than provincial jurisdiction. Such a find would, however, result in the application of the *Canada Labour Code* to the business and not the *PSSRA*. Consequently, the Board is without jurisdiction to determine the validity of these assertions, as determining whether a business is a "federal undertaking" is in the jurisdiction of the Canada Industrial Relations Board.

Who was the true employer?

[14] The applicant alleges that the employees were always employees of the PWGSC and/or the Treasury Board and were always subject to the certificate issued to the PSAC by this Board. These employees have been treated as employees of the Terrasses and governed by a collective agreement negotiated with the IUOE. The Terrasses acquired the building complex in 1991. There has been a delay of approximately

13 years in raising this issue. It is inappropriate for an employer to wait for such an extended period before raising an issue that goes to the very heart of the relationship between union and management. The allegation is also a direct challenge to the *Quebec Labour Code* certificate for these employees. It is not within the jurisdiction of this Board to determine the appropriateness or the legality of a certificate issued by a provincial labour board.

[15] In any event, since the decision of the Supreme Court of Canada in *Econosult* (*supra*), it has been clear that only employees appointed pursuant to the *PSEA* can be considered employees under the *PSSRA.*

[16] Accordingly, the applicant's submissions that the PWGSC paid the salaries of those employees and closely monitored and directed their work are not relevant. I therefore rule that the employees at Les Terrasses de la Chaudière, prior to March 1, 2004, were not employees of the PWGSC or the Treasury Board.

Has there been a transfer of jurisdiction pursuant to section 49 of the *PSSRA*?

[17] Section 49 of the *PSSRA* reads as follows:

> *49.(1) Where, by reason of a merger or an amalgamation of employee organizations or a transfer of jurisdiction among employee organizations, otherwise than as a result of a revocation of certification, an employee organization succeeds another employee organization that, at the time of the merger, amalgamation or transfer of jurisdiction, is a bargaining agent, the successor shall be deemed to have acquired the rights, privileges and duties of its predecessor, whether under a collective agreement, arbitral award or otherwise.*
>
> *(2) Where, on a merger, amalgamation or transfer of jurisdiction referred to in subsection (1), any question arises concerning the rights, privileges and duties of an employee organization under this Act or under a collective agreement or arbitral award in respect of a bargaining unit or an employee therein, the Board, on application to it by the employer or any person or employee organization concerned, shall determine what rights, privileges and duties have been acquired or are retained.*

> *(3) Before making a determination under subsection (2), the Board may make such inquiry or direct that such representation votes be taken among the employees to be affected by the determination as the Board considers necessary, and in relation to the taking of any such vote the provisions of subsection 36(3) apply.*

[18] The respondents submit that Les Terrasses de la Chaudière does not have standing to make such an application. An application under section 49 can be made by an employer, an employee organization or a person "concerned". The applicant is not an employer under the *PSSRA*, as it does not meet the very particular definition of "employer" under the *PSSRA* (subsection 2(1)). This leaves open the question of whether the applicant is a "person concerned". The manner in which section 49 is worded leads to a circular approach to standing. In order to have standing, there must first be a merger, amalgamation or transfer of jurisdiction. Once that fact has been established, a person "concerned" can bring an application. For the reasons set out below, I have concluded that there has not been a "transfer of jurisdiction". I therefore do not need to decide whether Les Terrasses de la Chaudière is a "concerned" person, as contemplated by section 49.

[19] In *Ship Repair Machinists and Mechanics Union (Atlantic) v. International Association of Machinists and Aircraft Workers, Local 1723,* PSSRB File Nos. 125-2-67 and 140-2-12 (1996) (QL), the Board was faced with the situation of employees being relocated from one side of the Halifax harbour to the other. It was alleged that this relocation placed them within the traditional jurisdiction of a different union local (and, therefore, within the jurisdiction of a council of employee organizations). In denying the application, the Board succinctly described the purpose of section 49:

> […]
>
> *The Board has not been referred to, nor has it been able to find, any jurisprudence which would support the contention that section 49 has application in the circumstances of this case, that is, where a so-called transfer of jurisdiction is not reflective of any agreement or arrangement between the trade union entities concerning their respective responsibilities and authority. In the Board's view, the purpose of section 49 is to allow the Board to give recognition for collective bargaining purposes to such agreements or arrangements; in their absence, the Board has no jurisdiction under this provision. The Board believes that section 49 was not intended to confer on the Board authority to intervene in*

> *disputes between employee organizations as to their respective jurisdiction over union members.*
>
> […]

[20] The Board explained its reasoning as follows:

> […]
>
> *There is no dispute that the physical relocation of the employees from Dartmouth to Halifax does not give rise to a merger or an amalgamation; the applicant's contention is that this "transfer of personnel" resulted in a "transfer of jurisdiction from IAM, Local 1723 to the Applicant Union". With all due respect, the Board fails to see how this relocation of some employees could give rise to a transfer of legal authority such as contemplated by section 49. A merger or amalgamation implies the implementation of restructuring decisions taken by employee organizations or their constituents; the application of the* ejusdem generis *rule of interpretation would suggest that a "transfer of jurisdiction" has a similar meaning....*
>
> […]

[21] In this case, there is no dispute between bargaining agents, but rather a dispute between a former employer and bargaining agents. However, the principles remain the same. Given that there are no provisions for successor rights when a formerly provincial activity becomes governed by the *PSSRA* regime (as there is under the *Canada Labour Code* in subsection. 44(3)), it is understandable that the IUOE would not pursue any successor rights application.

[22] In his submissions in *Rostrust Investments Inc.* (*supra*), counsel for the applicant also relied on the decision of the Canada Labour Relations Board (CLRB) (as it was then known) in *Canadian Brotherhood of Railway, Transport and General Workers*, 40 di 136, to support the applicant's submission that in some cases the lack of a voluntary agreement between bargaining agents could still justify intervention by the Board. The situation in *C.B.R.T.* (*supra*) was described by the CLRB as "unusual circumstances". In that case, a merger agreement between two bargaining agents had gone sour. In such an "abnormal" situation, the CLRB found it appropriate to intervene. An end to a contractual relationship, however, is not an "abnormal" or

"unusual" circumstance, and the decision in *C.B.R.T.* (*supra*) can be easily distinguished on that basis.

[23] In the absence of an agreement or arrangement between trade unions concerning their respective responsibilities or authority, the Board does not have jurisdiction. The situation here is not a "transfer of jurisdiction", as contemplated by section 49. What happened at Les Terrasses de la Chaudière was the termination of a contractual relationship and the subsequent hiring of former employees of the contractor. Section 49 was never intended to govern such situations.

[24] Given this determination of no jurisdiction, it is unnecessary to come to a decision on the remaining requests for relief set out in paragraph 11.

[25] For all of the above reasons, the Board makes the following order:

(The Order appears on the next page)

Order

[26] The application is dismissed for lack of jurisdiction.

August 12, 2005.

Ian R. Mackenzie,
Vice-Chairperson