

JOINT SUBMISSION BY THE BC BUILDING TRADES & BCBCBTU

Reply Submission to the Labour Relations Code Review

May 2024

AUTHORITY

This submission is respectfully submitted on behalf of the 20 local craft construction unions that represent more than 40,000 highly skilled unionized construction workers in B.C.



The BC Building Trades provides coordination and support to affiliated construction unions.

BCBCBTU

Bargaining Council of
BC Building Trades Unions

The Bargaining Council of BC Building Trades Unions is the exclusive bargaining agent in negotiations with CLR for member unions with craft bargaining units in ICI construction.

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BCBCBTU

Bargaining Council of
BC Building Trades Unions



The BC Building Trades and the Bargaining Council of BC Building Trades Unions (BCBCBTU) appreciates the opportunity to respond to submissions made to the Labour Relations Code Review Panel.

The BC Building Trades is the umbrella organization for the 20 local unions that work in British Columbia's building, construction and maintenance sectors. We represent more than 40,000 highly skilled unionized construction workers in this province.

The BCBCBTU is a council of trade unions under the *Labour Relations Code*. We are the exclusive bargaining agent in negotiations with the Construction Labour Relations Association of B.C. (CLR) on behalf of our member unions with craft bargaining units in ICI construction.

We work with our employers to develop and build our communities while striking a balance between economic, social and environmental objectives, thus ensuring both prosperity and sustainability for future generations.

The special nature of the construction industry and the unique labour relations setting that it produces must be recognized in any consideration of changes to the *Code*.

The Construction Labour Relations Association of B.C. has made several recommendations that we feel would harm the labour relations environment and infringe on worker rights with respect to picket lines.

We welcome this opportunity to provide our feedback to the BC Labour Relations Code Review Panel.

Sincerely,

A handwritten signature in black ink that reads 'Brynn Bourke'.

BRYNN BOURKE
Executive Director
BC Building Trades

A handwritten signature in black ink that reads 'Geoff Higginson'.

GEOFF HIGGINSON
President
Bargaining Council of BC Building Trades Unions

Jurisdictional Assignment Plan

CLR's Submission states:

"CLR recommends that the Code be amended to provide that the only recourse from a JAplan decision, including recourse by way of reconsideration or appeal, is to the Labour Relations Board. There ought not to be an additional, ancillary avenue which is not subject to the *Code*."

Our Position

The BC Building Trades and the BCBCBTU disagree with the requested amendment to the *Code*. The JAplan was jointly created by the BC Building Trades and the CLR and is administered by the Society for the Jurisdictional Assignment Plan of the B.C. Construction Industry. The members of the Society are directors appointed in equal number by the BCBT and the CLR. The JAplan was born in the late 1970s of a cooperative effort between the CLR and the BC Building Trades to address a recognized problem, avoid government regulation and remain part of the North American-wide system of dispute resolution.

The JAplan Memorandum of Understanding provides:

Article III

It is recognized by both parties that due to time loss, wildcats, disruption of work continuity and the ensuing poor publicity that there is a real and ever-present danger of governmental intervention in the question of construction jurisdictional disputes.

Article IV

It is further recognized that the already existing interventions by governments in certain other jurisdictions have not been found satisfactory or desirable by either Employer or Employee organizations. It is agreed that a mutually acceptable Plan freely negotiated by both parties is a preferable resolution to the problem.

The JAplan in British Columbia is and always has been part of a larger international system of dispute resolution. It is "within and supplementary to" what is now the "Plan for the Settlement of Jurisdictional Disputes in the Construction Industry" (the "Building Trades Department's Plan" or as the CLR calls it the "Canadian jurisdictional assignment plan"): Memorandum of Understanding establishing the Jurisdictional Assignment Plan, Article II.

The JAplan does not and was not intended to supplant the Building Trades Department's plan. As set out in Article VII of the memorandum of agreement:

There is agreement by both parties that a local board of adjudication, operating on a basis independent of the central Impartial Jurisdictional Disputes Board [the then dispute resolution body under what is now the Building Trades Department's Plan], or its successor [now an arbitrator appointed under the Building Trades Department's Plan], has inherent dangers that are unacceptable to either party. Firstly, such a Board would run contrary to the expressed wishes of larger

National or International organizations. Secondly, such a Board, working singly here or followed by similar Boards in other political jurisdictions would have the ultimate effect of splintering the “work jurisdiction” of all Trades and would hence lead to subsequent complexity of assignment for other than possibly local Contractors. It is understood that the office of Umpire will closely follow the precedents and systematic decisions of the Impartial Jurisdictional Disputes Board, or its successor, in order that systematic, orderly and unified progress will take place in British Columbia that is not in conflict with the greater jurisdictions of the International Unions or National or International Contractor Associations.

The Procedural Rules of the JAplan, Article X provide:

Any party or person bound by a decision of the Umpire may apply for a jurisdictional award to the Impartial Jurisdictional Disputes Board, or its successor, created by the Building and Construction Trades Department, AFL-CIO, [i.e., an arbitrator appointed under the Building Trades Department’s Plan] and such person or party shall be bound by all of the Procedural Rules and Regulations of the said Impartial Jurisdictional Disputes Board, or its successor, so far as may be applicable, and shall be bound by any decision of the said Impartial Jurisdictional Disputes Board, or its successor, (including any decision of the international appeal board provided therein) as if such decision were a decision of the Jurisdictional Assignment Umpire of the British Columbia Construction Industry.

The CLR is asking the Panel to undermine the twin pillars of the JAplan: self-regulation while remaining part of a larger North American-wide plan. CLR wants the Government to intervene in the Plan and eliminate the connection to the larger North American-wide Plan.

The unspoken impetus for this request is the modernization of the Building Trades Department’s assignment criteria.

The work assignment criteria in the JAplan are set out in Article VII of the Procedural Rules of the JAplan:

PROCEDURES TO BE USED BY THE UMPIRE

Decisions of Record and Agreements of Record established by or recorded by the Impartial Jurisdictional Disputes Board, established international trade practice, Prevailing Practice as defined, together with a reasonable acceptance of considerations for efficiency and capacity to furnish construction services to the public at reasonable cost, shall be accepted by the Umpire as factors in assigning work, (see also Article VII, 2(h) of the Procedural Rules and Article VII of the Memorandum of Understanding).

The work assignment criteria in Article VII of the Procedural Rules of the JAplan came from and were substantially the same as the work assignment criteria in the 1977

Building Trades Department plan. Since 1977, the Building Trades Department criteria have changed while the BC JAplan criteria have remained the same.

The Building Department Plan lists the work assignment criteria in Article V Section 8:

In rendering his decision, the Arbitrator shall determine:

(a) First whether a previous agreement of record or applicable agreement, including a disclaimer agreement, between the National or International Unions to the dispute governs;

(b) Only if the Arbitrator finds that the dispute is not covered by an appropriate or applicable agreement of record or agreement between the crafts to the dispute, he shall then consider [other assignment criteria] ...

In the result, there now are a number of differences in the work assignment criteria. For example, the Building Trades Plan now gives greater prominence to agreements and the “prevailing practice in the locality” than those factors receive under the B.C. JAplan.

Returning to the B.C. JAplan, Article VII of the Memorandum of Understanding requires the BC Umpire to follow the decisions rendered under the Building Trades Department Plan:

... It is understood that the office of Umpire will closely follow the precedents and systematic decisions of the Impartial Jurisdictional Disputes Board, or its successor, in order that systematic, orderly and unified progress will take place in British Columbia that is not in conflict with the greater jurisdictions of the International Unions or National or International Contractor Associations.

The B.C. Umpire is thus both bound by the now outdated work assignment criteria of the BC. JAplan and the revised work assignment criteria under the Building Trades Department Plan.

The CLR and the Building Trades unions have addressed this issue in a number of different forums – including in bargaining. The CLR likes the outdated assignment criteria from the 1970s and has tried unsuccessfully to lock in those criteria.

The JAplan has worked well for decades by providing an effective framework for resolving jurisdictional disputes. As recognized in Article IV of the JAplan, past government interventions in other jurisdictions have not been found satisfactory by both sides, which is the reasons that both sides agreed that a freely negotiated plan is preferable. CLR now seeks to undo that agreement before this Committee.

Definition of Strike

CLR's Submission states:

"CLR recommends that this Committee not make any recommendation to amend the definition of "strike" which would have the effect of permitting provincially regulated employees to refuse to cross a federal picket line."

Our Position

The BC Building Trades and the BCBCBTU agree that the Committee ought not to make any recommendations to amend the *Code* definition of "strike". However, we say so for very different reasons.

In the recent decision in *Vancouver Shipyards Co. Ltd., 2022 BCLRB 146* the reconsideration panel of the Board unfairly held that Section 1 of the Code does not include federal picket lines.

This case was extremely damaging to the workers effected in the shipyards. Workers were pitted against workers. In one case, a wife was forced to cross the picket line of her husband. And the unions faced crushing penalties if they did not advise their provincially regulated members to cross the picket line.

Bill 9, the *Miscellaneous Statutes Amendment Act, 2024* recently amended the definition of 'strike' in the Labour Code, ensuring that provincially regulated workers can choose to respect the picket lines of federally regulated workers or that of another province.

We support the passage of this legislation and the revised definition of strike.

Section 41

CLR's Submission states:

"CLR recommends that Section 41.1(2) be amended to provide that CLR is the exclusive employer bargaining agent with the sole authority to bargain PCAs/PLAs with the members of the Bargaining Council."

Our Position

The BC Building Trades and the BCBCBTU disagree with CLR's recommendation.

CLR is a voluntary association of employers. For good reasons, the *Code* does not require any construction employer to engage CLR as its bargaining agent and as far as we know no construction employers are calling for the amendment of section 41.1(2) to impose CLR as their bargaining agent with respect to PCAs/PLAs. This, we say, speaks volumes. Construction employers are of course free to engage CLR as their bargaining agent with respect to PCAs/PLAs if they so choose, but there is no reason to compel construction employers to do so.

CLR's unparticularized assertion that "exclusionary coalitions" have excluded BCBCBTU members from PCAs/PLAs is inaccurate. PCAs/PLAs are typically negotiated by the BCBCBTU. If any BCBCBTU members are unfairly excluded from a project, they have resource pursuant to the duty of fair representation provision of the *Code* in that regard. The fact that no BCBCBTU member unions appear to assert such exclusionary practice before this Committee or to the Board also speaks volumes.

It is also unclear how CLR's engagement as the employer bargaining agent could affect conduct on the union-side of the bargaining table.

The Relationship between CMAW and BCRCC

CLR's Submission states:

"CLR recommends that the Code be amended to remove the restriction on raids between CMAW and BCRCC so that employees may choose which of the two competing organizations they wish to belong to."

Our Position

The prohibition on raids is something that BCRCC and CMAW expressly agreed to (see in BCLRB No. B277/2007 at para. 21). It is one of a number of conditions required by the Board that facilitate the sharing of the representation of the craft of carpentry on the BCBCBTU. Another condition required by the Board is that the existence of the two carpenter unions not significantly undermine the functioning of the BCBCBTU (BCLRB No. B135/2015).

The removal of the restriction on raids recommended by CLR without revisiting the status quo of the sharing of the representation of the craft of carpentry between CMAW and the BCRCC (which was recently dissolved) is in our submission ill advised as it would potentially undermine the industrial stability of the ICI construction industry and the functioning of the BCBCBTU.

In Conclusion

The CLR is asking the Review Panel to recommend a fundamental change to the JAplan. CLR is seeking to change it from a voluntary plan that is part of a larger evolving plan to a plan stuck in the 1970s that is no longer consistent with the North American-wide system of dispute resolution. The CLR has been trying to get the Building Trades to agree to this change for a few years now – including making bargaining proposals to this effect – but they have not been successful. The BC Building Trades and the BCBCBTU vehemently oppose this change.

The BC Building Trades and the BCBCBTU support the recently amended definition of strike and submit that no further revisions are necessary in that regard.

With respect to section 41.1(2) there is no reason whatsoever to impose CLR as the exclusive employer bargaining agent with respect to PCAs/PLAs. There is no evidence of the exclusionary practices asserted by CLR and the fact that no construction employers or trade unions appear to be calling for this speaks volumes.

With respect to the restriction on raids between BCRCC and CMAW, it is something that they expressly agreed to, and the legislature should not step in to undo this agreement – particularly given its importance to the sharing of the craft of carpentry on the BCBCBTU.

/JL MoveUP